Montana Legislative History

Chapter: 423 Session L: 1983

Bill Number: SB 155

Checklist of Bill History

History and Final Status Sheet	x
Introduced Bill	X
Fiscal Note	X
Third Reading Bill	X
Final Version of Bill	X

House

Committee:
Highway and
Transportation

Hearing Date(s):
March 15, 1983
March 22, 1983
(Executive Action)

Senate

Committee: Judiciary

Hearing Date(s):
Feb. 2, 1983 (further consideration)
Feb. 18, 1983 (Executive Action)

Conference Committee

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: sg

Date: 10/16/2024

Notes: There were no Senate minutes available for the Jan. 26, 1983, initial hearing.

SENATE BILL NO. 155

Introduced: 01/14/83

Referred to Committee on Judiciary: 01/14/83
Hearing: 1/26/83
Report: 02/18/83, Do Pass, As Amended

2nd Reading: 02/22/83, As Amended
3rd Reading: 02/23/83

Transmitted to House: 02/23/83

Referred to Committee on Highways & Transportation: 02/28/83
Hearing: 3/15/83
Report: 03/23/83, Be Concurred In, As Amended

2nd Reading: 03/28/83, Be Concurred In
3rd Reading: 03/28/83, Be Concurred In

Returned to Senate with Amendments: 3/29/83

2nd Reading: 03/31/83
3rd Reading: 04/01/83

Transmitted to Governor: 04/08/83
Signed: 4/11/83, Chapter 423

Senate BILL NO. 155

INTRODUCED BY M. Williams, Stahl

A BILL FOR AN ACT ENTITLED: "AN ACT GIVING THE OWNER OF CONTIGUOUS PROPERTY THE RIGHT TO MEET THE HIGH BID FOR HIGHWAY FRONTAGE ACQUIRED FROM A RAILROAD; PROVIDING FOR INSTALLMENT PURCHASES; AMENDING SECTION 60-4-204, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 60-4-204, MCA, is amended to read:

"60-4-204. Option of original owner, ~~or~~ successor in interest, or owner of contiguous property to purchase at sale price. (1) The owner from whom the interest was originally acquired or his successor in interest shall have the option to purchase the interest by offering therefor an amount of money equal to the highest bid received for the interest at the sale. The offer shall be sent to the department by registered or certified mail within 10 days from the date of the sale.

(2) However, if the interest offered for sale is highway frontage that was acquired from a railroad, the owner of the contiguous property has the right to meet the high bid in the manner provided in subsection (1). In sales under this subsection, 77-2-329 through 77-2-331 apply."

-End-

INTRODUCED BILL

STATE OF MONTANA

REQUEST NO. 123-83

FISCAL NOTE

Form BD-15

In compliance with a written request received January 17, , 19 83 , there is hereby submitted a Fiscal Note for Senate Bill 155 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 155 is an act giving the owner of contiguous property the right to meet the high bid for highway frontage acquired from a railroad and providing for installment purchases.

ASSUMPTIONS:

1) Since little competitive bidding occurs under the current provisions of 60-4-204, it is anticipated that the proposed sale method would produce sales at the statutory minimum (90% of appraised value).
2) One property, appraised at $100,000, would be sold in FY 84.
3) Since the bill would allow installment payments of up to 33 years, any loss in revenue (caused by lower sales price) could be spread over a number of years. Fiscal impact estimates assumes 5-year installment payment.
4) 5% simple interest per year is charged on the remaining balance. As required in 77-2-329(2), the annual payments are equal.
5) A large number of sales involving installment payment plans would require additional Department of Highway personnel to administer these plans.

FISCAL IMPACT:

	FY 1984	FY 1985	FY 1986	FY 1987	FY 1988
Current Law	$100,000	$ -0-	$ -0-	$ -0-	$ -0-
Proposed Law	22,500	22,500	22,500	22,500	22,500
Increase/Decrease Revenue to Highway Earmarked	$(77,500)	$ 22,500	$ 22,500	$ 22,500	$ 22,500

FISCAL NOTE 5:Q/1

David M Lewis

BUDGET DIRECTOR
Office of Budget and Program Planning

Date: 1-20-83

Approved by Committee
on Judiciary

SENATE BILL NO. 155

INTRODUCED BY MCCALLUM, STOBIE

A BILL FOR AN ACT ENTITLED: "AN ACT ~~GIVING~~ VESTING THE OWNER OF CONTIGUOUS PROPERTY ~~THE RIGHT TO MEET THE HIGH BID FOR HIGHWAY FRONTAGE ACQUIRED FROM A RAILROAD; PROVIDING FOR INSTALLMENT PURCHASES; AMENDING SECTION 60-4-204, MCA~~ WITH ANY INTEREST ABANDONED BY THE STATE IN PROPERTY ACQUIRED FOR ESTABLISHMENT OF A HIGHWAY."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~Section 1. Section 60-4-204, MCA, is amended to read:~~

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~~(2) However, if the interest offered for sale is highway frontage that was acquired from a railroad, the owner of the contiguous property has the right to meet the high bid in the manner provided in subsection (1), in sales under this subsection, 77-2-322 through 77-2-331 apply.~~"

NEW SECTION. THAT READS:

Section 1. Abandoned highway property -- title vests in contiguous owner. (1) Upon abandonment by the state in the manner provided in subsection (2) of an interest in real property acquired for the purpose of establishment of a highway, the owner of contiguous real property or his successor in interest is vested with the abandoned interest to the extent provided in subsection (3).

(2) For the purposes of this section:

(a) a fee simple interest may be abandoned only by the proper order of the commission; and

(b) an interest of less than fee simple may be abandoned in the manner provided in subsection (a), by operation of law, and by judgment of a court of competent jurisdiction.

(3) The interest acquired by the contiguous property owner under subsection (1) is the abandoned interest or portion of such interest:

(a) if there are different contiguous property owners on each side of the abandoned interest, bounded on one side by the contiguous property and on the remaining two opposite sides by lines following the shortest distance from the extreme ends of the contiguous property to the center of the abandoned interest; and

SECOND READING

(c) if the owners of the contiguous property on each side of the abandoned interest are one and the same, bounded on two opposite sides by the contiguous properties and on the two remaining opposite sides by lines following the shortest distance from the extreme ends of the contiguous property on one side of the abandoned interest to the extreme ends of the contiguous property on the other side of the abandoned interest.

(4) For the purpose of this section, an interest in property abandoned by a proper order of the commission includes an interest in property that the commission determines to be unnecessary to the laying out, altering, construction, improvement, or maintenance of a highway, whether or not the commission determines to sell such interest.

-End-

SENATE BILL NO. 155

INTRODUCED BY MCCALLUM, STOBIE

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~~(2) However, if the interest offered for sale is highway frontage that was acquired from a railroad, the owner of the contiguous property has the right to meet the high bid in the manner provided in subsection (1), in sales under this subsection, 77-2-329 through 77-2-331 apply."~~

THERE IS A NEW MCA SECTION THAT READS:

Section 1. Abandoned highway property -- title vests in contiguous owner. (1) Upon abandonment by the state in the manner provided in subsection (2) of an interest in real property acquired for the purpose of establishment of a highway, the owner of contiguous real property or his successor in interest is vested with the abandoned interest to the extent provided in subsection (3).

(2) For the purposes of this section:

(a) a fee simple interest may be abandoned only by the proper order of the commission; and

(b) an interest of less than fee simple may be abandoned in the manner provided in subsection (a), by operation of law, and by judgment of a court of competent jurisdiction.

(3) The interest acquired by the contiguous property owner under subsection (1) is the abandoned interest or portion of such interest:

(a) if there are different contiguous property owners on each side of the abandoned interest, bounded on one side by the contiguous property and on the remaining two opposite sides by lines following the shortest distance from the extreme ends of the contiguous property ABUTTING UPON THE ABANDONED INTEREST to the center of the abandoned interest;

THIRD READING

and

(b) if the owners of the contiguous property on each side of the abandoned interest are one and the same, bounded on two opposite sides by the contiguous properties and on the two remaining opposite sides by lines following the shortest distance from the extreme ends of the contiguous property on one side of the abandoned interest to the extreme ends of the contiguous property on the other side of the abandoned interest.

(4) For the purpose of this section, an interest in property abandoned by a proper order of the commission includes an interest in property that the commission determines to be unnecessary to the laying out, altering, construction, improvement, or maintenance of a highway, whether or not the commission determines to sell such interest.

(5) THE INTEREST ACQUIRED BY A CONTIGUOUS PROPERTY OWNER UNDER SUBSECTION (3) IS CONDITIONED UPON THE USE OF THE PROPERTY FOR AGRICULTURAL OR NONCOMMERCIAL PURPOSES. IF THE PROPERTY IS USED FOR COMMERCIAL PURPOSES OR FOR PURPOSES OF FUTURE SUBDIVISION OR OTHER SIMILAR DEVELOPMENT, THE PROPERTY SHALL REVERT TO THE STATE FOR SALE PURSUANT TO TITLE 60, CHAPTER 4, PART 2. THIS RESTRICTION APPLIES TO ALL SUBSEQUENT HOLDERS OF TITLE TO THE PROPERTY.

-End-

SENATE BILL NO. 155

INTRODUCED BY MCCALLUM, STOBIE

A BILL FOR AN ACT ENTITLED: "AN ACT ~~GIVING~~ VESTING THE OWNER OF CONTIGUOUS PROPERTY ~~THE RIGHT TO MEET THE HIGH BID FOR HIGHWAY FRONTAGE ACQUIRED FROM A RAILROAD; PROVIDING FOR INSTALLMENT PURCHASES;~~ AMENDING SECTION 60-4-204, ~~MCA~~ WITH ANY INTEREST ABANDONED BY THE STATE IN PROPERTY ACQUIRED FOR ESTABLISHMENT OF A HIGHWAY."

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~~(2) However, if the interest offered for sale is highway frontage that was acquired from a railroad, the owner of the contiguous property has the right to meet the high bid in the manner provided in subsection (1), in sales~~

~~under this subsection 77-2-329 through 77-2-331 apply.~~"

THERE IS A NEW MCA SECTION THAT READS:

Section 1. Abandoned highway property -- title vests in contiguous owner. (1) Upon abandonment by the state in the manner provided in subsection (2) of an interest in real property acquired for the purpose of establishment of a highway, the owner of contiguous real property or his successor in interest is vested with the abandoned interest to the extent provided in subsection (3).

(2) For the purposes of this section:

(a) a fee simple interest may be abandoned only by the proper order of the commission; and

(b) an interest of less than fee simple may be abandoned in the manner provided in subsection (a), by operation of law, and by judgment of a court of competent jurisdiction.

(3) The interest acquired by the contiguous property owner under subsection (1) is the abandoned interest or portion of such interest:

(a) if there are different contiguous property owners on each side of the abandoned interest, bounded on one side by the contiguous property and on the remaining two opposite sides by lines following the shortest distance from the extreme ends of the contiguous property ABUTTING UPON THE ABANDONED INTEREST to the center of the abandoned interest;

and

(b) if the owners of the contiguous property on each side of the abandoned interest are one and the same, bounded on two opposite sides by the contiguous properties and on the two remaining opposite sides by lines following the shortest distance from the extreme ends of the contiguous property on one side of the abandoned interest to the extreme ends of the contiguous property on the other side of the abandoned interest.

(4) For the purpose of this section, an interest in property abandoned by a proper order of the commission includes an interest in property that the commission determines to be unnecessary to the laying out, altering, construction, improvement, or maintenance of a highway, whether or not the commission determines to sell such interest.

(5) THE INTEREST ACQUIRED BY A CONTIGUOUS PROPERTY OWNER UNDER SUBSECTION (3) IS CONDITIONED UPON THE USE OF THE PROPERTY FOR AGRICULTURAL OR NONCOMMERCIAL PURPOSES. IF THE PROPERTY IS USED FOR COMMERCIAL PURPOSES OR FOR PURPOSES OF FUTURE SUBDIVISION OR OTHER SIMILAR DEVELOPMENT, THE PROPERTY SHALL REVERT TO THE STATE FOR SALE PURSUANT TO TITLE 60, CHAPTER 4, PART 2. THIS RESTRICTION APPLIES TO ALL SUBSEQUENT HOLDERS OF TITLE TO THE PROPERTY.

SECTION 2. CODIFICATION INSTRUCTION. SECTION 1 IS

INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 60, CHAPTER 4, PART 2, AND THE PROVISIONS OF TITLE 60, CHAPTER 4, PART 2, APPLY TO SECTION 1.

-End-

for delinquent taxes or assessments, or both, or property which may have been struck off or sold to the county for delinquent taxes or assessments, or both, and against which property there then be any unpaid assessment for special improvements on account whereof there are outstanding special improvement district bonds or warrants of the city or town."

Approved April 11, 1983.

CHAPTER NO. 423

AN ACT VESTING THE OWNER OF CONTIGUOUS PROPERTY WITH ANY INTEREST ABANDONED BY THE STATE IN PROPERTY ACQUIRED FOR ESTABLISHMENT OF A HIGHWAY.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Abandoned highway property — title vests in contiguous owner.** (1) Upon abandonment by the state in the manner provided in subsection (2) of an interest in real property acquired for the purpose of establishment of a highway, the owner of contiguous real property or his successor in interest is vested with the abandoned interest to the extent provided in subsection (3).

(2) For the purposes of this section:

(a) a fee simple interest may be abandoned only by the proper order of the commission; and

(b) an interest of less than fee simple may be abandoned in the manner provided in subsection (a), by operation of law, and by judgment of a court of competent jurisdiction.

(3) The interest acquired by the contiguous property owner under subsection (1) is the abandoned interest or portion of such interest:

(a) if there are different contiguous property owners on each side of the abandoned interest, bounded on one side by the contiguous property and on the remaining two opposite sides by lines following the shortest distance from the extreme ends of the contiguous property abutting upon the abandoned interest to the center of the abandoned interest; and

(b) if the owners of the contiguous property on each side of the abandoned interest are one and the same, bounded on two opposite sides by the contiguous properties and on the two remaining opposite sides by lines following the shortest distance from the extreme ends of the contiguous property on one side of the abandoned interest to the extreme ends of the contiguous property on the other side of the abandoned interest.

(4) For the purpose of this section, an interest in property abandoned by a proper order of the commission includes an interest in property that the commission determines to be unnecessary to the laying out, altering, construction, improvement, or maintenance of a highway, whether or not the commission determines to sell such interest.

(5) The interest acquired by a contiguous property owner under subsection (3) is conditioned upon the use of the property for agricultural or noncommercial purposes. If the property is used for commercial purposes or for purposes of future subdivision or other similar development, the property shall revert to the state for sale pursuant to Title 60, chapter 4, part 2. This restriction applies to all subsequent holders of title to the property.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 60, chapter 4, part 2, and the provisions of Title 60, chapter 4, part 2, apply to section 1.

Approved April 11, 1983.

CHAPTER NO. 424

AN ACT TO ESTABLISH A FLATHEAD BASIN COMMISSION TO COORDINATE MONITORING OF THE QUALITY AND CONDITIONS OF FLATHEAD LAKE AND THE NATURAL RESOURCES WITHIN THE FLATHEAD BASIN; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Flathead Lake is the largest natural body of fresh water in the continental United States west of the Mississippi River and is a significant natural resource of value statewide and in the Northwestern region of the United States; and

WHEREAS, research undertaken as part of the Flathead River basin environmental impact study demonstrates that the quality of the Flathead Lake aquatic environment is vulnerable to and affected by all forms of land use and resource development within the Flathead basin; and

WHEREAS, even though the Flathead Lake aquatic environment is of excellent quality, the cumulative impact of a wide variety of resource development activities poses a threat to the aquatic environment of the Flathead basin; and

WHEREAS, protection of this natural resource is complicated by overlapping and potentially conflicting international, state, provincial, tribal, and local jurisdictional interests and responsibilities, which require awareness, coordinated effort, shared responsibility, and devotion to the naturalness of the basin by each land and water management entity with responsibility in the basin.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as the "Flathead Basin Commission Act of 1983".

Section 2. **Purpose.** The purpose of the Flathead basin commission is to protect the existing high quality of the Flathead Lake aquatic environment; the waters that flow into, out of, or are tributary to the lake; and the natural resources and environment of the Flathead basin.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 17, 1983

The thirtieth meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on February 17, 1983 at 10:07 a.m. in Room 325, State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL 170: SB170 was re-referred from State Administration. It was initially introduced to repeal sections 70-30-321 and 70-30-322, but the State Administration Committee found the need to include additional sections which specify that if an eminant domain situation existed the property would revert. Senator Marbut explained the intent of the 1981 legislature when adopting these laws. Senator Towe reviewed two possible legal theories to explain the interest taken by eminent domain: (1) you take a fee simple interest, or (2) you don't get a fee simple interest. He advised that SB170 in its amended form attempts to clear up the situation in which the state attempts to retain property even though it is no longer used for a highway. In this situation, the bill will give the landowner his property back. The last two sections of the amended version of SB170 will not interfere with sections 1 and 2. Sections 1 and 2 show what the legislature intended in 1981. Section 4 assures that the landowner will get his land back if eminent domain procedure is used.

OPPONENTS: Mike Zimmerman, representing the Montana Power Company, supported the bill in its introduced form as a repealer, but opposed the amended form. He stated that it now intends to unfairly take the condemnee's property interest (see witness statement Exhibit "A").

PROPONENTS: John Holter, representing the Montana Farm Bureau Federation, strongly supported the bill and recommended that the Committee give it a do pass recommendation (see witness statement Exhibit "B").

There being no further proponents or opponents, the hearing was opened to questions from the Committee.

The Committee discussed the addition of the new sections and did not feel there had been a violation of the constitutional prohibition against changing the purpose of a bill, as the amended bill appeared to do what the introduced bill intended. Senator Marbut advised that the Montana courts are holding decisions for this legislation. Senator Towe stated that the amendments merely clarify the law and make technical corrections to accomplish what was intended by the 1981 legislature. Chairman Turnage

was concerned with the constitutionality that no property shall be taken without just compensation but advised this would be discussed at a later time.

There being no further discussion, the hearing was closed.

CONSIDERATION OF SENATE BILL 393: Senator Daniels advised that his witness was still not available and requested that the hearing be deferred until February 18. The Committee acknowledged this request.

CONSIDERATION OF SENATE BILL 409: Senator Berg advised that he was sponsoring this bill at the request of the Department of Justice and introduced Margaret Johnson who would present the bill.

PROPONENTS: Margaret Johnson, an Assistant Attorney General, advised that SB409 will amend Section 46-18-203 by removing the phrase "during the period of the suspended sentence or deferred imposition of sentence." It will also add a new subsection which will permit the court to retain jurisdiction even after the suspended or deferred imposition has run, if a petition is filed within the period of the suspension or deferral. This bill will clarify the law in regards to requiring a petition. (See written testimony Exhibit "C") A proposed amendment was also distributed which would amend the title to reflect the changes in the bill.

There being no further proponents, no opponents, and no questions from the Committee, the hearing was closed and moved into executive session.

ACTION ON SENATE BILL 409: Senator Galt moved to adopt the amendments as proposed. This motion passed unanimously. Senator Mazurek moved SB409 DO PASS AS AMENDED. This motion also passed unanimously.

CONSIDERATION OF SENATE BILL 433: Senator Brown, sponsor of this bill, advised that it revises the laws concerning property exempt from execution. Professor McDonald at the Law School felt there was a need to update theses laws and therefore has rewritten this section of the Code. Because of the short notice given for the hearing, Professor McDonald was unable to be present to testify. Therefore, Senator Brown requested that the hearing be deferred until February 18. The Committee acknowledged this request.

The Chairman announced that the Committee was ready to consider executive action on several bills previously heard.

FURTHER CONSIDERATION OF SENATE BILL 348: Senator Mazurek moved to TABLE SB348. Senator Shaw stated that he felt the bill was broad, but that it did have merit. Senator Daniels agreed with the merit of SB348, but felt the dust should settle on Judge Bennett's decision before any action is taken. The Committee agreed with this assessment and deferred any action.

ACTION ON HOUSE BILL 323: Senator Mazurek was concerned with how a judge's vacancy would be filled if the no vote wins. Senator Daniels advised that some cities appoint their judges. Senator Daniels didn't see the need for this legislation and moved HB323 BE NOT CONCURRED IN. This motion passed unanimously.

ACTION ON SENATE BILL 348: The Committee agreed that this bill should be laid to rest in order to eliminate polarization of interest groups. Senator Mazurek again moved to TABLE SB348. This motion passed with Senators Galt and Shaw voting in opposition.

ACTION ON SENATE BILL 155: Counsel distributed and reviewed the proposed amendments with the Committee. The bill in its amended form would address the issue of true abandonment by the state of highway property. Senator Crippen moved to adopt the amendments. Chairman Turnage suggested including a definition of abandonment. Committee counsel explained the effect this change would have on the Department's ability to sell the property. Senator Crippen moved to adopt the prepared amendments and to include a definition for abandonment as follows: "for the purposes of this section, abandoned shall include a determination by the commission that the property is no longer necessary for highway purposes whether or not it has been offered for sale." This motion passed unanimously. Senator Crippen then moved SB155 DO PASS AS AMENDED. This motion also passed unanimously.

ACTION ON SENATE BILL 366: Counsel distributed two amendment proposals. Option 1 would eliminate the waiver from mandatory requirement for uninsured motorist coverage. Option 2 is a compromise between Option 1 and the bill as originally introduced. It would eliminate the waiver provision, but include language similar to that as introduced (see proposed amendments, Exhibits "D" and "E"). The Committee debated the two options at length and finally concluded that Option 1 was the most appropriate as it would coincide with the mandatory requirement for liability. Senator Crippen moved to amend the bill as proposed in Option 1. This motion passed with Senators Halligan and Berg voting in opposition. Senator Crippen then moved that SB366 DO PASS AS AMENDED. This motion resulted in a tie.

Senator Berg then moved SB366 DO NOT PASS. This motion carried with Senators Galt, Mazurek, Crippen and Turnage voting in opposition.

ACTION ON SENATE BILL 385: The Committee discussed the need for this bill and how requiring inspection of vehicles for identification numbers would cause additional work and expense for innocent owners. Senator Halligan moved SB385 DO NOT PASS. This motion carried unanimously.

ACTION ON SENATE BILL 388: Counsel distributed amendments and reviewed how the amendment would take the power away from the commission for it to act upon its own motion. Senator Berg moved to adopt the proposed amendment. This motion passed unanimously. Senator Berg then moved SB388 DO PASS AS AMENDED. This motion also passed unanimously.

ACTION ON HOUSE BILL 327: The Committee agreed that shoplifting is a problem, but felt this was a bad bill. The idea that a merchant could frisk a person in private concerned the Committee. It was the consensus of the Committee that it would take too much work to reword the bill; therefore, Senator Berg moved SB327 BE NOT CONCURRED IN. This motion carried with Senator Crippen voting in opposition.

ACTION ON HOUSE BILL 452: Amendments were distributed that would assure the results of a polygraph test could not be admitted into evidence during the course of a trial. The bill would still provide that a polygraph examiner must be licensed and subject to continuing education. Senator Crippen moved to adopt the proposed amendments. This motion carried unanimously. Senator Crippen then moved that HB452 BE CONCURRED IN AS AMENDED. This motion carried with Senators Shaw, Mazurek, Daniels and Galt voting in opposition.

ACTION ON HOUSE BILL 143: It was the consensus of the Committe that this was not a good bill. Senator Berg moved HB143 BE NOT CONCURRED IN. This motion carried with Senator Hazelbaker voting in opposition.

ACTION ON SENATE BILL 313: Senator Mazurek moved that SB313 BE TAKEN FROM THE TABLE. This motion passed unanimously. The Committee then amended the bill to remove the authority from the arresting officer to revoke or suspend the license and to decrease the period of suspension and revocation. Senator Halligan moved to adopt the amendments. This motion passed unanimously. Senator Halligan then moved SB313 DO PASS AS AMENDED. This motion passed unanimously.

RECONSIDERATION OF SENATE BILL 366: The Committee felt they should reconsider their action on SB366. Senator Crippen moved to TABLE SB366. This motion carried unanimously.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 12:03 p.m.

JEAN A. TURNAGE
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983 Date 2-17-83

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Daniels, M. K. (D)	✓		
Galt, Jack E. (R)	✓		
Halligan, Mike (D)	✓		
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)	✓		

DATE 2-17-83

COMMITTEE ON Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppo
Margaret Johnson	Attorney General	SB409	X	
John Holte	Montana Farm Bureau	SB-170	✓	

(Please leave prepared statement with Secretary)

EXHIBIT "A"
February 17, 1983

WITNESS STATEMENT

Name Michael E. Zimmerman | Committee On Judiciary

Address 40 E. Broadway | Date 2-17-83

Representing The Montana Power Company | Support

Bill No. SB 170 - Amended | Oppose X

Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. The focus of the MPC's objection to SB 170 is the new sections 3 and 4 added by the Senate State Administration Committee. We believe these amendments
2. oppose an important fact. Unless the compensation paid to the condemnee reflects an adjustment for the reversionary interest, the condemnee's property interest will be unfairly taken in the operation of this
3. law. We believe §§ 3 + 4 oppose the fact that the condemnor paid FMV for the property interest he acquired.
4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

EXHIBIT "B"
February 17, 1983

NAME: John Holter DATE: 17 Feb 83

ADDRESS: Bozeman

PHONE:

REPRESENTING WHOM? Montana Farm Bureau Federation

APPEARING ON WHICH PROPOSAL: SB-170

DO YOU: SUPPORT? XXX AMEND? OPPOSE?

COMMENTS: Mr. Chairman ,

The Montana Farm Bureau Federation was made aware for the need for this kind of legislation last fall. MFBF has policy which SB-170 addresses. MFBF recommends a do pass report on SB-170.

John Holter

John Holter
Montana Farm Bureau
Federation

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

EXHIBIT "C"
February 17, 1983

TESTIMONY OF MARGARET M. JOYCE JOHNSON

ASSISTANT ATTORNEY GENERAL

REGARDING SENATE BILL 409

Section 46-18-203 of the Montana Code Annotated in its present form permits a judge to revoke a suspended or deferred sentence "during the period of the suspended sentence or deferred imposition of sentence." That phrase was interpreted by the Montana Supreme Court in the 1981 case of FELIX v. MOHLER, 636 P.2d 830 (copy attached). The Court held that the filing of a petition to revoke the sentence during the period of the suspension or deferral was insufficient to vest the sentencing court with jurisdiction to revoke if the court was unable to act and hold a hearing before the sentence had run. Although that interpretation of the statute certainly accords with the literal wording of the statute, brief analysis shows that that could not have been the intent of the legislature in enacting that provision. Such an interpretation effectively gives probationers serving a suspended sentence or for whom imposition of sentence was deferred, a carte blanche to violate the conditions of their probation at any time during the final days of their probation because the court will be unable to hold a hearing on the petition

"C" 2-17-83

even if a petition to revoke is filed during the period of suspension or deferral.

To rectify that situation, the Department of Justice has requested that Senate Bill 409 be introduced to amend Section 46-18-203 and remove from the statute the phrase "during the period of the suspended sentence or deferred imposition of sentence" which the Court interpreted in FELIX v. MOHLER. The bill also adds a new subsection (2) to the statute specifically permitting a sentencing court to act upon a petition to revoke either a suspended sentence or a deferred imposition of sentence even after the period of suspension or deferral has run as long as the petition is filed within the period of suspension or deferral.

The proposed amendment is made applicable to all petitions filed after the effective date of the act and the act is made effective upon passage and approval by the Governor. As originally proposed, the title to this bil began, "AN ACT TO CLARIFY THE LAW REGARDING THE REVOCATION OF A DEFERRED OR SUSPENDED SENTENCE . . . etc." We would propose that the title again be amended to reflect that this bill is intended to clarify what has always been the only reasonable intent of the legislature regarding revocation of a deferred or suspended sentence, i. e. (1) that anytime a probationer

violates the conditions of his probation during the period of deferral or suspension, he is subject to having that sentence revoked, whether or not the court in question is able to hold a hearing on the petition to revoke during the period of suspension or probation and (2) that a probationer cannot with impunity violate the conditions of his probation in its final days simply because the sentencing court's calendar and the requirements of due process do not permit the holding of a hearing on the petition during the remaining days of the period of suspension of deferral or suspension. Failure to comply with the conditions of probation and prompt action by the State in petitioning the sentencing court to revoke the suspension or deferred imposition of sentence should suffice to permit the sentencing court to act on the merits of that petition and revoke the sentence if the claimed violations of probation are found to have occurred.

Aaron FELIX, Petitioner,

v.

Mel MOHLER, Director, Swan River Youth Forest Camp, for the State of Montana, Respondent.

No. 81-340.

Supreme Court of Montana.

Submitted on Briefs Oct. 22, 1981.

Decided Nov. 12, 1981.

Habeas corpus proceeding was brought to secure release of petitioner from restraint under district court order revoking a three-year deferred sentence and imposing a three and one-half-year sentence. The Supreme Court, Morrison, J., held that statute governing revocation of suspended or deferred sentence grants jurisdiction to courts to revoke suspended or deferred sentences only during the period of such sentences.

Writ granted.

1. Criminal Law ⇐982.9(2)

Action by judge, magistrate, or justice of the peace to revoke suspended or deferred sentence outside the provisions of statute governing revocation of suspended or deferred sentence is without jurisdiction. MCA 46-18-203.

2. Statutes ⇐190

If statute is plain, unambiguous, direct and certain, statute speaks for itself and there is nothing left for court to construe.

3. Criminal Law ⇐982.9(2)

Statute governing revocation of suspended or deferred sentence grants jurisdiction to judges, magistrates, or justices of the peace to revoke suspended sentences or impose sentences following deferred sentences only during period of suspended or deferred sentences, regardless of whether petition for revocation has been filed prior to termination of such sentence. MCA 46-18-203.

Patterson, Marsillo, Tornabene & Schuyler, Missoula, for petitioner.

Mike Greely, Atty. Gen., Helena, Edward P. McLean, Deputy County Atty., Missoula, for respondent.

MORRISON, Justice.

Petitioner, Aaron Felix, applies for a writ of habeas corpus stemming from an order of the Fourth Judicial District Court entered on May 27, 1981. This order revoked a three year deferred sentence given petitioner on May 22, 1978 and imposed a three and one-half year sentence at the Montana State Prison upon petitioner.

Petitioner was convicted of theft, a felony, in the District Court of the Fourth Judicial District, Missoula County. On May 22, 1978, he was given a three year deferred imposition of sentence on the condition that restitution be made.

On August 20, 1979, this deferred sentence was continued and petitioner was ordered to complete restitution by November 5, 1980. Petitioner failed to comply with this order by November 5, 1980, and a petition to revoke petitioner's deferred sentence was filed on January 16, 1981. A hearing on this petition was held May 27, 1981, three years and five days after the initial deferral.

At this hearing, petitioner moved to dismiss the proceeding on the grounds that the District Court was without jurisdiction. The District Court overruled petitioner's objection concluding that the Court retains "... jurisdiction (when) the petition is filed within the (deferral) time."

The District Court sentenced petitioner to three and one-half years in the Montana State Prison. Petitioner has been incarcerated since, either at the Montana State Prison or the Swan River Youth Forest Camp.

Petitioner raises the following issue:

1) Whether a District Court retains jurisdiction to revoke a deferred imposition of sentence beyond the time period of deferral if a petition to revoke is timely filed?

In *State v. Porter* (1964), 143 Mont. 528, 540, 541, 391 P.2d 704, 711, this Court stated that:

> "[t]his state is committed to the doctrine that once a valid sentence has been pronounced, the court imposing the same is lacking in jurisdiction to vacate or modify the sentence, *except as otherwise provided by statute* ..." (Emphasis added.)

[1] Section 46-18-203, MCA, is a specific procedural statute granting judges, magistrates, or justices of the peace authority to revoke a suspended sentence or impose sen-

tence following a deferred imposition of sentence. Section 46-18-203, MCA, provides:

"Revocation of suspended or deferred sentence. A judge, magistrate, or justice of the peace who has suspended the execution of a sentence or deferred the imposition of a sentence of imprisonment under 46-18-201 or his successor is authorized, *during the period of the suspended sentence or deferred imposition of sentence, in his discretion, to revoke the suspension or impose sentence and order the person committed.* He may also, in his discretion, order the prisoner placed under the jurisdiction of the board of pardons as provided by law or retain such jurisdiction with his court. Prior to the revocation of an order suspending or deferring the imposition of sentence, the person affected shall be given a hearing." (Emphasis added.)

This authority must be exercised in accordance with the precise provisions of this section; action by a judge, magistrate, or justice of the peace outside the provisions of Section 46-18-203, MCA, is without jurisdiction. *State v. Porter*, supra.

The controlling language in Section 46-18-203, MCA, is "... during the period of such suspended sentence or deferred imposition of sentence..." Determining the meaning of this phrase disposes of this petition.

[2, 3] It is well settled that if a "... statute is plain, unambiguous, direct and certain, the statute speaks for itself and there is nothing left for the court to construe." *Shannon v. Keller* (1980), Mont., 612 P.2d 1293, 1294, 37 St.Rep. 1079, 1081. Such is the case before this Court. The words "during the period" are extremely plain and unambiguous. The clear import is that a court is vested with jurisdiction to revoke a suspended or deferred sentence *only* during the running of the suspended or deferred sentence. Once such time has expired a court is without jurisdiction to decide petitions for revocation filed by the State.

The State requests this Court to construe Section 46-18-203, MCA, to mean that a timely filed petition for revocation vests jurisdiction in the Court, regardless whether the hearing on such petition is held after the suspended or deferred sentence has expired. The State relies on decisions from Nevada and Oklahoma in support of this contention. See *Sherman v. Warden, Nevada State Prison* (1978), Nev., 581 P.2d 1278; *Degraffenreid v. State* (1979), Okl.Cr., 599 P.2d 1107.

These authorities are not in point. Nevada and Oklahoma have statutory provisions which vest jurisdiction in the courts for purposes of revocation of suspended or deferred sentences upon the filing of a petition for revocation. Therefore a timely filed petition of revocation in these states vests jurisdiction in courts when the time of the suspended or deferred sentence has run.

Montana's statute pertaining to revocations of suspended or deferred sentences, Section 46-18-203, MCA, contains no language stating that a timely filed petition for revocation invokes a court's jurisdiction over these matters. It is axiomatic that this Court cannot insert what the legislature has not statutorily included. Section 1-2-101, MCA.

In conclusion, we hold that Section 46-18-203, MCA, grants jurisdiction to judges, magistrates, or justices of the peace to revoke suspended sentences or impose sentences following deferred sentences *only* during the period of the suspended or deferred sentences. This jurisdiction extends only through the running of the suspended or deferred sentence, regardless of whether a petition for revocation has been filed prior to the termination of the suspended or deferred sentence.

Therefore, petitioner's request for a Writ of Habeas Corpus is granted. It is hereby ordered that such writ issue immediately and that petitioner be discharged from the custody of the Swan River Youth Forest Camp.

HASWELL, C. J., and DALY, HARRISON and SHEA, JJ., concur.

EXHIBIT "D"
February 17, 1983

Amendments to SB 366 Option 1

1. 1 Title, lines 4 through 9.
Following: "AN ACT"
Strike: lines 4 through 9 in their entirety
Insert: "DELETING THE CURRENT PROVISION FOR WAIVER OF UNINSECURED MOTORIST COVERAGE; AMENDING SECTION 33-23-201, MCA."

2. Pages 1 and 2.
Strike: all of the bill following the enacting clause
Insert: "Section 1. Section 33-23-201, MCA, is amended to read:

"33-23-201. Motor vehicle liability policies to include uninsured motorist coverage -- rejection by insured. ~~(1)~~ No automobile liability or motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be delivered or issued for delivery in this state, with respect to any motor vehicle registered or principally garaged in this state, unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in 61-6-103, under provisions filed with and approved by the commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom.

~~(2) The named insured shall have the right to reject such coverage. Unless the named insured requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy where the named insured had rejected the coverage in connection with the policy previously issued to him by the same insurer.~~""

DSN7/Amend SB 366

EXHIBIT "E"
February 17, 1983

Amendments to SB 366 Option 2

1. Title, line 8.
Following: "VEHICLES"
Insert: "DELETING THE CURRENT PROVISION FOR WAIVER OF UNINSURED MOTORIST COVERAGE;"

2. Title, line 9.
Strike: "33-23-203"
Insert: "33-23-201"

3. Page 1, line 12.
Strike: "33-23-203"
Insert: "33-23-201"

4. Page 1, lines 13 through line 19 on page 2.
Strike: lines 13 through 19 in their entirety
Insert: ""33-23-201. Motor vehicle liability policies to include uninsured motorist coverage -- ~~rejection-by-insured~~ exception. (1) ~~No~~ Except as provided in subsection (2), no automobile liability or motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be delivered or issued for delivery in this state, with respect to any motor vehicle registered or principally garaged in this state, unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in 61-6-103, under provisions filed with and approved by the commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom.

(2) ~~The--named--insured-shall-have-the-right-to-reject-such coverage.---Unless--the--named--insured--requests--such-coverage in--writing,-such-coverage-need-not-be-provided-in-or supplemental-to-a-renewal-policy-where-the-named--insured-had rejected--the--coverage--in--connection-with-the-policy previously-issued-to-him-by-the-same-insurer.~~ A motor vehicle liability policy may exclude from uninsured motorist coverage injuries arising out of an accident involving a motor vehicle, owned by a person insured under such policy, for which no uninsured motorist premium has been paid.""

STANDING COMMITTEE REPORT

February 17 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 409

Berg

Respectfully report as follows: That Senate Bill No. 409

introduced bill, be amended as follows:

1. Title, line 5.
Following: "AN ACT"
Insert: "CLARIFYING THE LAW REGARDING THE REVOCATION OF A DEFERRED OR SUSPENDED SENTENCE;"

And, as so amended,

DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

February 17 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration House Bill No. 323

Veleber (Daniels)

Respectfully report as follows: That House Bill No. 323

third reading bill,

BE NOT CONCURRED IN

DXXXSX

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

4/C

STANDING COMMITTEE REPORT

February 17 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 155

McCallum

Respectfully report as follows: That Senate Bill No. 155

introduced bill, be amended as follows:

1. Title, line 4.
   Strike: "GIVING"
   Insert: "VESTING"

2. Title, lines 5 through 7.
   Following: "PROPERTY"
   Strike: the remainder of line 5 and lines 6 and 7 in their entirety.

3. Title line 7.
   Following: "MCA."
   Insert: "WITH ANY INTEREST ABANDONED BY THE STATE IN PROPERTY ACQUIRED FOR ESTABLISHMENT OF A HIGHWAY."

Continued on Page 2

And, as so amended,
DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

4. Page 1, line 10.
Strike: section 1 in its entirety.
Insert: "Section 1. Abandoned highway property -- title vests in contiguous owner. (1) Upon abandonment by the state in the manner provided in subsection (2), of an interest in real property acquired for the purpose of establishment of a highway, the owner of contiguous real property or his successor in interest is vested with the abandoned interest to the extent provided in subsection (3).
(2) For the purposes of this section:
(a) a fee simple interest may be abandoned only by the proper order of the commission; and
(b) an interest of less than fee simple may be abandoned in the manner provided in subsection (a), by operation of law, and by judgment of a court of competent jurisdiction.
(3) The interest acquired by the contiguous property owner under subsection (1) is the abandoned interest or portion of such interest:
(a) if there are different contiguous property owners on each side of the abandoned interest, bounded on one side by the contiguous property, and on the remaining 2 opposite sides by lines following the shortest distance from the extreme ends of the contiguous property to the center of the abandoned interest; and
(b) if the owners of the contiguous property on each side of the abandoned interest is one and the same, bounded on two opposite sides by the contiguous properties and on the two remaining opposite sides by lines following the shortest distance from the extreme ends of the contiguous property on one side of the abandoned interest to the extreme ends of the contiguous property on the other side of the abandoned interest.
(4) For the purpose of this section, an interest in property abandoned by a proper order of the commission includes an interest in property which the commission determines to be not necessary to the laying out, altering, construction, improvement, or maintenance of a highway, whether or not the commission determines to sell such interest."

And, as amended,

DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

February 17 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 385

Stimatz

Respectfully report as follows: That Senate Bill No. 385

DO NOT PASS

~~DO PASS~~

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

February 17 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 388

Blaylock

Senate Bill No. 388

Respectfully report as follows: That

introduced bill, be amended as follows:

1. Page 1, line 13.
   Strike: "on its own motion or"

2. Page 1, line 21.
   Strike: "adopt a verified written complaint or"

3. Page 2, line 1.
   Strike: "commission's motion or the"

4. Page 2, line 4.
   Strike: "adopted or"

And, as so amended,

DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

4/6.

STANDING COMMITTEE REPORT

February 17 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration House Bill No. 327

Bergene (Berg)

Respectfully report as follows: That House Bill No. 327

third reading bill,

BE NOT CONCURRED IN

DO PASS

Jean A. Turnage, Chairman.

STATE PUB. CO.
Helena, Mont.

JC

STANDING COMMITTEE REPORT

February 17 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration House Bill No. 452

Daily (Crippen)

Respectfully report as follows: That House Bill No. 452

third reading bill, be amended as follows:

1. Title, line 13.
   Following: "COMMERCE;"
   Insert: "PROHIBITING THE RESULTS OF A POLYGRAPH EXAMINATION FROM BEING INTRODUCED OR ADMITTED INTO EVIDENCE;"
2. Page 8, line 5.
   Strike: "Admissibility"
   Insert: "Inadmissibility"
3. Page 8, line 6.
   Strike: "Nothing in [sections 1 through 15] permits the"
4. Page 8, line 8.
   Strike: "to"
   Insert: "may not"

And, as so amended,

~~DO PASS~~ BE CONCURRED IN

Chairman.

JEAN A. TURNAGE.

STATE PUB. CO.
Helena, Mont.

JC

STANDING COMMITTEE REPORT

February 17 19 33

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration House Bill No. 143

Ernst (Turnage)

Respectfully report as follows: That House Bill No. 143

third reading bill,

BE NOT CONCURRED IN

DOXXXSX

STATE PUB. CO.
Helena, Mont.

JEAN A. TURNAGE, Chairman.

J.C.

STANDING COMMITTEE REPORT

February 17 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 313

Halligan

Respectfully report as follows: That Senate Bill No. 313

introduced bill, be amended as follows:

1. Title, line 6.
   Strike: "SUSPEND OR REVOKE"
   Insert: "SEIZE"

2. Title, line 8.
   Strike: "A PERIOD OF REVOCATION AND"
   Insert: "FOR SUSPENSION OR REVOCATION OF THE LICENSE BY THE MOTOR VEHICLE DIVISION;"

3. Page 2, lines 14 and 15.
   Strike: "suspend" through "driver by"

4. Page 2, line 15.
   Strike: "seizing"
   Insert: "seize"

Continued on Page 2

And, as so amended,

DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

5. Page 2, line 25,
Following: "60-days"
Insert: "Upon receipt of the report, the division shall suspend the license for the period provided in subsection (5)"

6. Page 3, line 3.
Strike: "notice of suspension or revocation and a"

7. Page 3, line 8.
Strike: "6 months"
Insert: "90 days"

8. Page 3, line 12.
Strike: "1 year"
Insert: "6 months"

9. Page 3, line 14.
Strike: "have been served"

10. Page 3, line 17.
Strike: "notice and temporary"

And, as so amended,

DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 2, 1983

The twentieth meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on February 2, 1983 at 10:05 a.m. in Room 331, State Capitol.

ROLL CALL: All members were present.

The Chairman announced that the Committee was ready to consider executive action on several bills previously heard.

FURTHER CONSIDERATION OF SENATE BILL 155: Senator Berg moved that SB155 DO NOT PASS. The Chairman reviewed the intent of the bill and the problems addressed by its proponents. A letter was received from the Highway Department which provided the information requested by the Committee at the January 26 meeting (See Minutes, January 26, for letter). It was the concensus of the Committee that the problem the proponents of SB155 are facing is federal in nature; however, it was agreed that something should be done to help these people. The Chairman suggested amending the bill to change its application from the "contiguous owner" of the property for sale to "the people in the same position as an original owner or successor in interest." Senator Berg withdrew his motion and the bill was referred to staff counsel for researching the proposed amendment.

ACTION ON SENATE BILL 179: Since there is currently a House bill pending which better deals with the conflicts between the antidiscrimination and nepotism laws, Senator Crippen moved to TABLE SB179. This motion passed unanimously.

ACTION ON SENATE BILL 194: Counsel distributed copies of the proposed amendment to the Committee for review. Senator Mazurek pointed out that Section 20 of the bill allocates mineral interest earned on trust for unlocatable mineral interest owners to be credited to the district court fund rather than the county general fund. The Committee felt this section should be striken in its entirety. Senator Mazurek then moved the proposed amendments along with this deletion which passed unanimously. Senator Brown moved SB194 DO PASS AS AMENDED. This motion carried unanimously.

ACTION ON SENATE BILL 236: Counsel distributed copies of the amendment as proposed and the Committee discussed the reasons for adding rebuttable presumption. They felt this would expand on the property to be forfeited. Senator Mazurek questioned the language referring to burden on lending institutions. After reading the amendment further it was found that the later language clears up this question. It was also pointed out that

section 44-1-102 as referred to in number 4 of the amendment should be changed to 44-12-102. Senator Mazurek then moved to adopt the amendments. This motion passed unanimously. Senator Crippen moved that SB236 DO PASS AS AMENDED. This motion also passed unanimously.

ACTION ON SENATE BILL 201: Chairman Turnage referred the Committee to the letter written by Judge Harkin which summed up the intent of this bill. Senator Shaw moved that SB201 DO PASS. This motion carried with Senator Crippen voting in opposition.

FURTHER CONSIDERATION OF SENATE BILL 203: The Committee agreed that the intentions of this bill are good; however, they felt that the bill, as worded, would prevent a judge who was defeated during an election from serving. Action was therefore deferred so that this fact could be taken into consideration.

ACTION ON SENATE BILL 218: Senator Crippen moved that SB218 DO PASS. Senator Berg inquired as to the definition of "disturbed or inebriated" as referred to in the bill. The Committee agreed that these words would give the sheriff some discretionary latitude. The motion for a DO PASS recommendation was then voted on and passed unanimously.

FURTHER CONSIDERATION OF SENATE BILL 248: John Maynard of the Attorney General's Office, distributed a handout which explains his position on the bill (Exhibit "A"). This information had been requested by the Committee at the January 31 hearing. It was the concensus of the Committee that the bill was not acceptable for passing; however, there were some provisions which needed saving. The 90 day review of fitness to proceed and provision which allows the state to raise this issue were decided to be important. It was also agreed that it is necessary to correct the reference to section 10, which had been incorrectly referred to as section 9 by the past legislature. Counsel questioned if the Committee intended to include a provision for disposition of highly dangerous people who were unfit for further criminal proceedings. The Committee advised they felt a provision of this nature is necessary and referred the bill to counsel for work.

ACTION ON SENATE BILL 196: The Committee was concerned with the automatic cost-of-living adjustment provision of this bill. They felt that if this was passed for the court reporters, other county and city employees would request the same. The salary increase as proposed was again discussed. Senator Crippen suggested reducing the minimum base salary to $16,000 since their overall increase in salary is approximately 30%. Senator Halligan moved the adoption of the above. This motion passed unanimously. The Committee also felt that "for purposes of perfecting an appeal" should be deleted from page 4, line 5,

so as to eliminate any question of whether the reporter would prepare the appeal transcript for other purposes. The Committee also thought the wording which ties the transcript rates to the U.S. judicial conference rates should be deleted. Senator Berg moved to adopt these proposals. This motion passed unanimously. Senator Crippen then moved that SB196 DO PASS AS AMENDED. This motion also passed unanimously.

ACTION ON SENATE BILL 220: The Committee discussed the Department having the authority to approve restoration of good time. It was agreed that this authority should remain with the Department and that the bill was acceptable as drafted. Senator Crippen moved that SB220 DO PASS. This motion carried unanimously.

ACTION ON SENATE BILL 225: The Committee reviewed the bill and the effects of increasing the time period for holding a voluntary committal an additional five days. Senator Berg moved SB225 DO PASS. This motion carried with Senators Halligan, Mazurek and Crippen voting in opposition.

FURTHER DISCUSSION OF SENATE BILLS 23, 37 and 41: The Committee reviewed the intent of the proposed bills and amendments. It was their understanding that the major intent is to promote the streamlining of the water adjudication program. The constitutionality of giving the powers of a district court to a water judge was discussed. The Committee also expressed concern over giving the water courts administrative review powers. Taking jurisdiction from the district courts and putting it solely with four water judges was also a concern. Senator Galt suggested that Judge Lessley should be contacted so as to refresh the Committees' memories as far as his reasoning for some of these requests. It was agreed that action should be deferred until Judge Lessley has been contacted.

FURTHER CONSIDERATION OF SENATE BILL 26:

The Committee reviewed testimony from the January 21 hearing and concurred that they should try to act accordingly. It was agreed that Ravalli County should continue to be included in the 4th Judicial District and that Lake and Sanders Counties should be severed to create their own 20th Judicial District. Senator Shaw moved to amend SB26 accordingly. This motion passed unanimously.

Senator Daniels moved to delete Stillwater and Carbon Counties from the 6th Judicial District and to include these counties with Yellowstone in the 13th Judicial Districts, as suggested at the January 21 hearing. This motion passed with Senator Berg voting in opposition. The Committee agreed that the issue

of the new judge would be dealt with in a later portion of the bill. Senator Berg expressed concern for the caseload on the one judge in the 6th Judicial District.

The effects of adding Meagher, Wheatland, Gold Valley and Musselshell Counties to the 10th Judicial District were discussed. The Committee agreed that it would be to their best interests to be included in the 14th Judicial District since Ravalli would be included with the 4th District. Senator Berg moved to amend the bill so as to keep the 10th and 14th Judicial Districts as they are now. This motion passed unanimously.

The Committee then dealt with Section 2 of the bill which distributes the judges. Senator Berg moved to delete the 6th and 10th Districts from subsection (1). This motion passed unanimously.

Senator Berg moved to delete the 13th District from subsection (3) on page 3, line 10 and to create a new subsection (4) which would allocate five judges to the 13th District. This motion passed unanimously.

Senator Daniels moved to strike Section 3 in its entirety and to renumber accordingly. This motion carried unanimously. Senator Berg moved to strike Sections 5 and 6 in their entirety as there was a constitutional question as to limiting the term of judges to less than six years. This motion passed unanimously. Senator Mazurek felt that the termination provision should be eliminated and could foresee problems with effective dates and assigning of hold-over judges. The Committee felt that the Supreme Court should make the assignment. The bill was then referred to counsel and Steve Brown, who consented to work further on the bill.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 11:57.

JEAN A. TURNAGE
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983 Date 2-2-83

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Daniels, M. K. (D)	✓		
Galt, Jack E. (R)	✓		
Halligan, Mike (D)	✓		
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)	✓		

Each day attach to minutes.

EXHIBIT "A"
February 2, 1983

MONTANA'S INSANITY DEFENSE AND SB 248

LINES OF ACCOUNTABILITY

TRADITIONAL VERDICTS WITHOUT ALLEGATION OF MENTAL DISEASE OR DEFECT

NOT GUILTY | GUILTY

PRE-1979

NOT GUILTY | NOT GUILTY BY REASON OF MENTAL DISEASE OR DEFECT RENDERING DEFENDANT "UNABLE TO APPRECIATE CRIMINALITY OF HIS CONDUCT OR CONFORM HIS CONDUCT TO REQUIREMENTS OF LAW" | GUILTY

CURRENT LAW

NOT GUILTY	NOT GUILTY BY REASON OF LACK OF MENTAL STATE	GUILTY BUT UNABLE TO APPRECIATE CRIMINALITY OF CONDUCT OR TO CONFORM CONDUCT TO THE REQUIREMENTS OF LAW.	GUILTY
DISPOSITION: DISCHARGE	DISPOSITION: 46-14-301	DISPOSITION: 46-14-311	DISPOSITION: Title 46, ch. 18

GUILTY BUT INSANE

NOT GUILTY | GUILTY BUT INSANE | GUILTY

GUILTY BUT MENTALLY ILL

NOT GUILTY | GUILTY BUT UNABLE TO APPRECIATE CRIMINALITY OR TO CONFORM CONDUCT | GUILTY

SB 248 - GUILTY BUT SUFFERING FROM MENTAL DISEASE OF DEFECT

?

EXHIBIT "A"
February 2, 1983

STATE
OF
MONTANA

ATTORNEY GENERAL
MIKE GREELY

215 N. SANDERS, JUSTICE BUILDING, HELENA, MONTANA 59620
TELEPHONE (406) 449-2026

MEMORANDUM

TO: SENATE JUDICIARY COMMITTEE

FROM: JOHN MAYNARD
Assistant Attorney General

DATE: 2 February 1983

RE: SENATE BILL NO. 248

Senate Bill 248 is an act to generally revise the laws relating to a claim of mental disease or defect in criminal proceedings and provides for a verdict of "guilty but suffering from a mental disease or defect at the time of the offense." There are provisions within the bill that should be enacted because they clarify areas of the law for which some clarification is needed. However, other portions of the bill make changes that are not needed and should not be made.

On page 1 of the bill, line 16, the phrase "and judgment" should be retained. On page 2 of the bill, lines 1 through 8 should be retained and the language which is added, "the jury may return a verdict of guilty but suffering from a mental disease or defect at the time of the offense," should be struck.

The attempt to include in Montana's law a verdict of guilty but suffering from mental disease or defect at the time of the offense initially suggests one of two common approaches to the insanity defense utilized in other states. Neither of the alternatives is consistent with abolishing the defense to the extent permitted by the Constitution, the apparent intent of the 1979 Legislative Assembly.

In the first instance if a verdict of guilty but suffering from mental disease or defect is included in Montana law to permit a finding of guilt without proving the intent element of the crime, the verdict would be unconstitutional under the Fifth and Fourteenth Amendments. It would relieve the State of its

EXHIBIT "A"
February 2, 1983

constitutional burden of proving every element of the crime charged beyond a reasonable doubt.

In the alternative approach a verdict of guilty but suffering from mental disease of defect requires that a standard other than the standard currently provided in Montana law must be applied to defendants raising the issue of their state of mind at the time they committed the offense. In states which have adopted this approach to the guilty but mentally ill verdict the American Law Institute standard of accountability is required. That standard states that a person is not responsible for criminal conduct if at the time of committing the offense "he lacked substantial capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law." Readopting that standard in Montana would be a step backward and would raise the problems that the 1979 law sought to resolve.

The amendment on page 2 line 13 including the county attorney among those who can raise the issue of the defendant's fitness to proceed, should be retained. In a number of instances defense counsel have refused to raise the issue of a defendant's fitness to proceed thereby using the issue for leverage in the plea bargaining process.

The next amendment, page 3 beginning at line 4 through line 11, addresses a potential problem with the constitutionality of our current fitness to proceed law and adequately remedies that problem. The United States Supreme Court has held that indefinite commitments based on unfitness to proceed violate due process. Jackson v. Indiana, 406 U.S. 715, 730 (1972).

Turning to page 4, the amendments referring to a verdict of guilty but suffering from mental disease or defect should be deleted and the current provisions in the law should be retained. The amendment on line 18 of page 5, amending the 1979 session law, clarifies an issue that has been raised in these types of proceedings relative to a typographical error that was made during the conference committee process during the 1979 legislative session.

On page 6, lines 18 and 19, the sections suggested for repeal should be retained. Section 46-14-102, MCA, provides that the only evidence that is relevant at the guilt phase of a trial involving an issue of mental disease or defect excluding responsibility is whether "the defendant did or did not have a state of mind which

EXHIBIT "A"
February 2, 1983

is an element of the offense." This statute precludes a defendant from offering the oftentimes confusing testimony of psychiatrists and psychologists relating to whether or not he appreciated the criminality of his conduct or was able to conform his conduct to the requirements of law. By narrowing the scope of the inquiry in such proceedings to cognitive, as opposed to volitional matters, the Legislature abolished the traditional insanity defense. Now the only instances in which a person might be successful in raising the defense in Montana are those instances in which the state of mind which is an element of the offense charged cannot be proved beyond a reasonable doubt.

Following some discussion with Senator Towe and Harold Hanser, Yellowstone County Attorney, I understand the major concern underlying SB 248 to be the dispositional alternatives contained in sections 46-14-301 though 46-14-304, MCA. However, those statutes only apply to a defendant who is found "not guilty for the reason that due to a mental disease or defect he could not have a particular state of mind that is an essential element of the offense charged." If the State does not prove a state of mind that is an essential element of the offense charged it has not sustained its burden of proving every element of the crime charged beyond a reasonable doubt.

Usually, in cases where the state has not proven its case beyond a reasonable doubt, a defendant is entitled to be released. However, if he raised the issue of mental disease or defect affecting state of mind the court can order the defendant committed to the custody of the superintendent of Warm Springs state hospital if the defendant cannot be released without danger to others. Following this committment the burden of proof is on the defendant to show that he may be safely released. As another alternative in cases where a defendant is found not guilty by reason of lack of mental state, the county attorney can seek civil commitment as provided in Title 53, chapter 21, MCA. In any event, the defendant need not be released absent a judicial determination that it is safe to release him.

Against this backdrop, there appears to be no reason to adopt a verdict of "guilty but suffering from a mental disease or defect at the time of the offense."

STANDING COMMITTEE REPORT

February 2, 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 194

Aklestad

Respectfully report as follows: That Senate Bill No. 194

introduced bill, be amended as follows:

1. Title, lines 7 through 11.
   Following: "COURT;"
   Strike: the remainder of line 7 through "FUND;" on line 11.

2. Title, line 15.
   Following: "25-7-209,"
   Insert: "AND"

3. Page 2, line 21.
   Strike: "district court"
   Insert: "general"

4. Page 3, line 12.
   Strike: "district court"
   Insert: "general"

(continued on page 2)

And, as so amended,

DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

February 2, 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 236

Crippen

Respectfully report as follows: That Senate Bill No. 236

introduced bill, be amended as follows:

1. Title, line 6.
   Following: "LAWS;"
   Insert: "TO CREATE A REBUTTABLE PRESUMPTION OF FORFEITURE; TO PROVIDE THE MEANS BY WHICH THE PRESUMPTION MUST BE REBUTTED;"

2. Title, line 8.
   Following: "44-12-102,"
   Insert: "44-12-203 THROUGH"

3. Title, line 9.
   Strike: "44-12-205,"

(continued on page 2)

And, as so amended,

DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

Y.C.

Re: SB236 February 2, 19 83

4. Page 3.
Following: line 16
Insert: "Section 2. Section 44-12-203, MCA, is amended to read:
"44-12-203. Procedure Presumption -- procedure following answer or expiration of time for answering. (1) There is a rebuttable presumption of forfeiture as to all property listed in 44-12-102.

~~(1)~~ (2) If a verified answer to the notice is not filed within 20 days after the mailing or publication of the notice, the court ~~shall hear evidence on the charge of unlawful use of the property and~~ upon motion may must order the property forfeited to the state.

~~(2)~~ (3) If a verified answer is filed within 20 days, the forfeiture proceedings shall be set for hearing without a jury not less than 30 days after the answer is filed. Notice of the hearing shall be given in the manner provided for service of notice of seizure."

Section 3. Section 44-12-204, MCA, is amended to read:
"44-12-204. Proof required or permitted at hearing. ~~(1) At the hearing any owner or claimant who has a verified answer on file may show by competent evidence that the property was not used for the purpose charged.~~ In order to rebut the presumption of forfeiture: (1) an owner of property who has a verified answer on file must prove that the property was not used for the purpose charged.

(2) an owner of property listed in 44-12-102(g) who has a verified answer on file may prove in the alternative that the use of the property occurred without his knowledge or consent.

~~(2)~~ (3) A a claimant of a security interest in the property who has a verified answer on file ~~may~~ must prove that his security interest is bona fide and that it was created after a reasonable investigation of the moral responsibility, character, and reputation of the purchaser and without knowledge that the property was being or was to be used for the purpose charged. However, no person who has a lien dependent upon possession for compensation to which he is legally entitled for making repairs or performing labor upon, furnishing supplies or materials for, or providing storage, repair, or safekeeping of any property and no person doing business under any law of this state or the United States relating to financial institutions, as defined in 32-6-103, loan companies, or licensed pawnbrokers or regularly engaged in the business of selling the property or of purchasing conditional sales contracts for the property may be required to prove that his security interest was created after a reasonable investigation of the moral responsibility, character, and reputation of the owner,

(continued on page 3)

Chairman.

STATE PUB. CO.
Helena, Mont.

purchaser, or person in possession of the property when it was brought to such person.""
Renumber: subsequent sections

5. Page 3, line 20.
Following: "charged,"
Insert: "and that the property listed in 44-12-102(1)(g) was used without the knowledge or consent of the owner,"

6. Page 3, line 23.
Following: "charged,"
Insert: "and that the property listed in 44-12-102(1)(g) was used with the knowledge or consent of the owner,"

7. Page 4, lines 14 through 23.
Strike: subsection (b) in its entirety.
Renumber: subsequent subsections

AND AS AMENDED
DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

February 2, 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 218

Van Valkenburg

Respectfully report as follows: That Senate Bill No. 218

(Introduced Bill)

DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

W.C.

STANDING COMMITTEE REPORT

February 2, 1983

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 201

Turnage

Respectfully report as follows: That Senate Bill No. 201

(Introduced Bill)

DO PASS.

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

H.C.

STANDING COMMITTEE REPORT

February 2, 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 196

VanValkenburg

Respectfully report as follows: That Senate Bill No. 196

introduced bill, be amended as follows:

1. Title, line 5.
   Strike: "AND FOR AN ANNUAL COST OF LIVING INCREASE"
2. Page 1, line 16.
   Strike: "$18,000"
   Insert: "$16,000"
3. Page 1, line 19 through line 6 on page 2.
   Following: "works." on line 19.
   Strike: line 19 through "years." on line 6 on page 2.
4. Page 4, line 5.
   Strike: "For the purpose of perfecting an appeal"
5. Page 4, lines 9 through 11.
   Strike: "or at the maximum" on line 9 through "greater" on line 11.

And, as so amended,

DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

AC.

5. Page 4, line 11.
Following: "commissioner"
Insert: "with the approval of the court"

6. Page 4, line 19.
Following: "commissioner"
Insert: "with the approval of the court"

7. Page 5, line 5.
Following: "commissioner"
Insert: "with the approval of the court"

8. Page 13, line 23.
Strike: Section 20 in its entirety.

And, as so amended,

DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

February 2, 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 220

Daniels

Respectfully report as follows: That Senate Bill No. 220

(Introduced Bill)

DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

y.c.

STANDING COMMITTEE REPORT

February 2, 1983

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 225

Daniels

Respectfully report as follows: That Senate Bill No. 225

(Introduced Bill)

DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

MINUTES OF THE MEETING OF THE HOUSE HIGHWAYS AND TRANSPORTATION COMMITTEE, MARCH 15, 1983

The meeting was called to order by Chairman Abrams on Tuesday, March 15, 1983 at 12:30pm in Room 129, State Capitol. All members were present with the exception of Rep. Shontz who was absent.

HEARINGS

SENATE BILL 330. SEN. JACK GALT, District 23, Meagher County, told the Committee the bill would satisfy all parties concerned wtih regard to special license plates for National Guard members.

MR. GARY SCOTT, Montana Army National Guard Enlisted Association, told the Committee the plates were distinctive and would be issued with identification.

MAJOR RICHARD MOONEY, Montana Army National Guard, said the plate would provide positive identification in case of emergency, citing the riot at Montana State Prison, to which National Guard members responded. He advised the plates would promote credibility on the part of the individual and are good advertising for the Guard, adding there would be no extra cost to the State in administering the program. A sample plate was provided for review by committee members and is red, white and blue, with the minuteman emblem.

MR. LARRY MAJERUS, Administrator, Motor Vehicle Division, Department of Justice, told the Committee Guardsmen need only to present authorization to the county treasurer for the plates.

MR. GEORGE SCHULZ, member of the National Guard stated his support of the bill.

OPPONENTS

There were no opponents of the bill.

QUESTIONS

REP. SOLBERG asked if county numbers would be printed on the plates. Mr. Majerus said they were not required in the bill, but are required on personalized plates. Major Mooney told committee members he would have no objection to such designations.

REP. HEMSTAD asked if the bill should be so amended. Mr. Majerus replied the county treasurer would probably provide the county designation as a routine matter.

REP. LYBECK asked if all license plate bills were processed separately, referring to Prisoner of War and handicapped plates. Rep. Keyser replied they were.

SEN. GALT closed and asked Rep. Holliday to carry the bill.

SENATE BILL 155. SEN. GEORGE MCCALLUM, District 12, Sanders County, testified as chief sponsor of the bill, which is an attempt to correct a specific situation in his district and may be applied to similar situations in the future. He advised committee members a strip of railroad right of way along the highway in Sanders County was deeded to the County in 1928 and quitclaim deeded to the State for $1 in 1947. He said the State attempted to auction the land in 1955, adding the bill would allow persons whose property adjoined such frontage to purchase same from the State.

PROPONENTS

MR. HOWARD BROUTY, Co-Chairman, White Pines Land Owners Association, advised committee members the railroad gave up its rights to the right of way when the property was abandoned in 1928. He said the County received a quitclaim deed for $1 in Augsut, 1982 and within 10 days the State Highway Department purchased an extra 50 feet on the West side and 25 feet on the East side for 100 feet and 75 feet of right of way, respectively, along a 12 mile strip of land. He explained the Department now claims to own 400 feet of right of way, which it intends to sell, while area landowners have abstracts and deeds to the contrary. He told the Committee a representative of the Department said neither quiet title nor good title could be produced to the land by the Department and that the land actually belongs to the federal government. Citing a specific incident, he said the State sold land to Everett McKenzie, who is unable to obtain a deed since the land allegedly belongs to the Louisiana Pacific Railroad and told the Committee the State should have to prove the title and not area land owners (exhibit).

MRS. BESSIE KLINE, White Pines Land Owners, read from a prepared statement and told the Committee on even sections of the land there is no mention of the land grant railroad until 1928, (exhibit).

MR. AL DAVIS, Trout Creek, presented the Committee with prepared testimony and said it was his understanding land abandoned by the railroad would revert to the original land owners and that the law was later amended to give land abandoned by railroads to the federal government for roads which had to be constructed within one year of acquisition of the land, (exhibit).

MRS. ADRIAN MORICH, provided copies of several letters from representatives of the Department of Highways, advising of differing amounts of right of way on her property (exhibits).

MR. FRED KLINE, White Pine Land Owners, told the Committee he purchased property four years ago, which was surveyed at 61 acres and on which he has paid taxes. He said he has found he does not actually own the land and questions Departmental actions and his constitutional rights. He asked the Committee to provide him with a definition of a quitclaim deed.

MR. NICK MARICH stated his support of prior statements made.

OPPONENTS

There were no opponents of the bill.

IN CLOSING, Sen. McCallum advised the Committee of an amendment made by Sen. Regan, wherein any land to be used for commercial purposes would revert to the State.

QUESTIONS

REP. KEYSER asked David Niss, Legislative Council Attorney, if it would be unconstitutional to limit use of the property to agriculture and non-commercial purposes. Mr. Niss replied he had not seen the amendment prior to the meeting but would consider them and advise the Committee of his findings, as it could pose legal problems.

REP. KEYSER said he wondered if the bill would pass if the amendment were stricken. Rep. Solberg asked those testifying in support of the bill if the State would not provide them with a quitclaim deed. Mrs. Brouty replied she already has a warranty deed to her property.

REP. HEMSTAD asked if the bill would help Mr. Kline. Mr. Niss replied abandonment of the land would depend upon real ownership of the State to begin with.

MR. MARICH asked why the State subdivision law would be applied in addition to county law. Rep. Stobie replied Section 5 should not be part of the bill, in that case.

REP. STOBIE asked if a different amendment would better address the situation of subdivision in lieu of Sen. Regan's amendment. Sen. McCallum replied a 100 foot strip of land would be fairly difficult to subdivide, adding he had spoken with Department Director, Gary Wicks, who agreed to wait on the sale of the land until the situation had undergone legislative review.

REP. LYBECK asked if there were a study commission to determine the prudence of the sale of such rights of way. Sen. McCallum asked who the property belonged to and if the Department of Highways had a right to the property.

MR. GREG PETESCH, Legislative Council Attorney, said the bill pertains to property abandoned by the State and not that abandoned by the railroad, unless it is later purchased by the State and a road is built on the property which is later abandoned.

REP. KEYSER told the Committee a bill assigned to Judiciary Committee relates to abandonment, repealers and fee simple. He asked Mr. Beck if the property in question was acquired through the abandonment procedure. Mr. Beck replied it was acquired through land grant railroad abandonment, quitclaimed by the Northern Pacific to Sanders County and then to the State of Montana, adding there was a problem within the granting clause of the quitclaim deed.

REP. KEYSER asked if the ICC ruling was ever challenged in court. Mr. Beck repied it was not.

REP. COMPTON asked Mrs. Kline if the Interstate Commerce Commission was given authority via the 1822 Act. Mrs. Kline told him a Sanders County Commissioner, who is active in real estate sales, said the 100 feet of frontage could be subdivided.

The hearing was closed on Senate Bill 155.

EXECUTIVE SESSION

SENATE BILL 330. REP. KEYSER moved the bill Be Concurred In with the intent that county numbers be placed on the plates. The motion was seconded by Rep. Solberg.

REP. HEMSTAD said there was no reason for county designations on the National Guard plates or on personalized plates.

CHAIRMAN ABRAMS asked if a statement of intent was necessary. Mr. Petesch said the statement would not be required but could be attached, or a Committee letter could be drafted informing the Deparment of Justice of committee intent.

REP. KEYSER said the county designation would make checking a vehicle registration easier.

The motion made by Rep. Keyser was unanimously approved with a letter of intent to be sent to the Department of Justice.

SENATE BILL 120. SEN. PAUL BOYLAN, District 38, Gallatin County, testified as sponsor of the bill and read from prepared testimony, advising committee members the bill would cut costs on leases.

PROPONENTS

MR. BEN HAVDAL, Montana Motor Carriers Association, told the Committee he supports the bill as it does not remove the requirement for a motor carrier to show a properly drawn lease, but omits the prefiling and prior authorization clauses.

MR. WAYNE BUDT, Montana Public Service Commission, said the bill would bring Montana into conformity with ICC regulations, adding the change would be effective July 1, 1983, coinciding with the fiscal year.

OPPONENTS

There were no opponents of the bill.

QUESTIONS

REP. KOEHNKE asked what power equipment meant. Sen. Boylan explained it referred to tractors pulling trailers.

REP. KEYSER asked Mr. Budt if there were a standard lease form. In response, Mr. Budt replied there was.

REP. BROWN asked if Senate Bill 170 conflicted with Senate Bill 155. Sen. Boyland replied he didn't think so and closed.

EXECUTIVE SESSION.

SENATE BILL 120. REP. HAMMOND moved the bill Be Concurred In. Rep. Stobie moved the effective date by amended to July 1, 1983, which was seconded by Rep. Brown and given uanimous committee approval.

REP. KEYSER moved the bill Be Concurred In as Amended. The motion was seconded by Rep. Hammond and given unanimous committee approval.

SENATE BILL 402. REP. ZABROCKI moved the bill Be Concurred In.

REP. STOBIE asked what position a motorist would be in when passing a bicycle with double yellow lines present. Mr. Petesch replied the motorist could not technically, pass the bicycle.

REP. LYBECK told the Committee he viewed defining a bicycle as a vehicle to be a problem in view of its speed on roads versus that of an automobile.

REP. BROWN commented the bicyclist would be required to ride as far to the right as possible. Rep. Koehnke asked if bicyclists could ride on wide shoulders when defined as a vehicle, since a vehicle may not do so.

REP. KEYSER said he was concerned with the section allowing bicyclists to ride two abreast with no clarification as to when it could be done. He explained that, according to statute, a vehicle shall not travel at a speed impeding traffic, which could happen if bicyclists travelled abreast on narrow roads.

REP. BROWN requested time to study the bill further and received committee approval to do so.

The meeting was adjourned at 2:27pm.

Hubert Abrams

REP. HUBERT ABRAMS, CHAIRMAN

Joann T. Gibson, Secretary

STANDING COMMITTEE REPORT

MARCH 15 19 83

MR. SPEAKER::

We, your committee on HIGHWAYS AND TRANSPORTATION

having had under consideration SENATE Bill No. 330

THIRD reading copy (BLUE color)

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAW RELATING TO SPECIAL LICENSE PLATES FOR MEMBERS OF THE NATIONAL GUARD; AMENDING SECTION 10-1-110, MCA."

Respectfully report as follows: That SENATE Bill No. 330

BE CONCURRED IN

REP. HUBERT ABRAMS

Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

STANDING COMMITTEE REPORT

MARCH 15 19 83

MR. SPEAKER:

We, your committee on HIGHWAYS AND TRANSPORTATION

having had under consideration SENATE Bill No. 120

THIRD reading copy (BLUE color)

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE PROVISIONS RELATING TO THE LEASING OF POWER EQUIPMENT BY CLASS A, B, C, AND D CARRIERS BY DELETING THE REQUIREMENT FOR SPECIFIC APPROVAL AND CERTIFICATION BY THE PUBLIC SERVICE COMMISSION; AMENDING SECTION 69-12-611, MCA."

Respectfully report as follows: That SENATE Bill No. 120

Be amended as follows:

1) Title, line 8
Following: "MCA"
Insert: "; AND PROVIDING AN ERRECTIVE DATE."

2) Page 2, line 18
Following: line 17
Insert: "Section 2. Effective date. This act is is effective July 1, 1983."

AND AS AMENDED
BE CONCURRED IN

~~DO PASS~~

REP. HUBERT ABRAMS
Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

VISITORS' REGISTER

HOUSE Highways COMMITTEE

BILL SB 330 Date 3-15-83

SPONSOR Galt

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
Gary D. Scott	Clancy	Mont National Guard	✓	
James Greytak	Helena	Mont Nat'l Guard Assn	✓	
Dick Mooney	Helena	MT ARNG	✓	
Larry Majerus	Helena	Motor Vehicl Div	✓	
George Kelsey	Kalispell	self	✓	
Galt		Sponsor	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE Highways COMMITTEE

BILL SB 155 Date 3-15-83

SPONSOR McCallum

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPP
FRANK CHEMA	TROUT CREEK	WHITEPINE LAND OWNERS	X	
Lisa Klein	"	"	X	
Fred Coleman	" "	" "	X	
Ed Hegarty	Big Fork	" "	X	
Howard Trott	Big Fork	"	X X	
Adrian Marsh	Trout Creek Box 124 MT	" "	X	
Arnie Davis	Box 1398 Trout Creek MT	"	X	
Al Davis	Box 1398 Trout Creek MT	"	X	
Nick Marich		"	X	
Mons Teigen	Helena	MT Stockgrowers Coalition Woolgrowers	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE Highways COMMITTEE

BILL SB 120 Date 3-15-83

SPONSOR Boylan

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOS
Wayne Budt	911 Idaho	MPSC	X	
Ben Havdahl	Helena	Mont. Motor Carriers	X	
Paul F Boylan	Senate Dist 38		X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

Name GARY D. SCOTT Committee On Highways

Address Box 975 R Clancy Date 3-15-83

Representing MONT NATIONAL GUARD Support ✓

Bill No. SB 330 Oppose

Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. BETTER WAY OF ADMINISTRATING THE GUARD PLATE PROGRAM

2. VERY LITTLE COST TO STATE

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

WITNESS STATEMENT

Name Dick Mooney, MAJ Committee On Highways

Address 2037 Gold Rush Av - Helena, MT Date 15 Mar 83

Representing MT ARNG Support ✓

Bill No. SB 330 Oppose

Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:
1. Identification in case of emergency

2. Pride in membership - Espirid D'Corps

3. Recognizes stability on part of Guardsperson -

4. Recruiting and Retention - Advertising

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

WITNESS STATEMENT

NAME Howard W. Routy BILL No. S.B. 155

ADDRESS EASTSHORE RT Big Fork Mont DATE MAR-15-1983

WHOM DO YOU REPRESENT WHITEPINE LANDOWNERS ASS.

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: The State Highway Comm. should survey any property to be sold at Auction because they have no idea of lines. Property owners should not have to survey. Private owners have to survey so the state should have to when less than 20 acre tracts.

Should have to give good merchantable title before selling. They have attempted to sell land they could only give a quit claim deed to. Should not be up to buyer to quiet title - the seller should do that.

Clarify bill S-155

FORM CS-34
1-81

WITNESS STATEMENT

NAME James R. Davis BILL No. SB 155

ADDRESS Box 1398 Saint Creek, Mt. DATE 3-15-83

WHOM DO YOU REPRESENT White Line Land Owners

SUPPORT Yes OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: It is my understanding that:
When the federal government granted their right aways to the Rail Road across the country, it was with the stipulation, in case of abondment of the right away for Rail Road purpares. The property was to revert back to the adjacent land owners. At some later date, I'm not sure of the exact date. There was an Amendment passed to this bill, that the Rail Road could Abandon the right away to a government body for the purpose of roads, providing they constructed the roads with-in one year.

By the Hi-Way departments own admission, the property in question is surplus, and therefore it should be returned to the adjacent property owners.

FORM CS-34
1-81

WITNESS STATEMENT

NAME .Fred Choin BILL No. S.B. 155

ADDRESS Box 128 Thompson Falls, Mt. 59873 DATE March 15,1983

WHOM DO YOU REPRESENT White Pine Land Owners

SUPPORT yes Bill 155 OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: Feb. 18,1982 I got a letter from the Highway Dept. telling me that part of the property I bought and paid taxes on would be sold at public auction. Feb. 24,1982 Mr Foley expressed the thought we could either buy the property in dispute (which we had already bought or owned) and there was nothing we could do anout it. March 4,1982 Mr. Proudy, Mr. Chemia and my self met with The Govoner and Repesenative of the High Way Dept. and were informed that the High Way Dept. Did not have clear title to the property. We were told that we could not aquire property by paying taxes from the State. Mar 10,1982 Mr. Chemia, Mrs Kline and my self met with comessioners . Jan 26,1983 several of the land owners and others met with the Senate Judicial Cimmittee where I got the empression that the land belonged to the Federal Government, and the despuite would have to be setteled in a federal court.

I understand that all the highway Dept could give us , even if we were foolish enough to pay them for the land , is a Quit Claim Deed. All this means to me is that they do not claim any part of it. [redacted], I will give you a quit claim deed to this Bldg. for a [redacted] of a lot less than they want from us, if that is all it is worth.

If I understand the consitution right , it grants the rigght to own property, a home, as long as the purchas price and taxes has been paid up to date. The White Pine Land Owners had doubts instilled in them, and have been thrown into a finicaal struggle they can ill aford. We are supposed to be proud of that constituiion. Hundreds of thousands of men have died for that right. I have begin to wonder if they have not died in vain.

I think it was [redacted] said "togather we stand, devided we fall". The United states has been fragmented Right from the presedent to the individual famly members. NO ONE can agree on any thing. I was told that the war MY uncles

FORM CS-34
1-81

fought in would end all wars. I was told the war I fought in w would end all wars. I was told that the WORLD IS OUT OF FUEL. I am told that there is a glut of oil now. I was told I could own my home. I paid the price and now I find I have been lied to again. I have taken the same income report to more than one internal revenue men and no two can fill them out the same. I am told that I must fill them out correct or be subjected to prosecution. I see crime syndicates flourish, known members on the street to maim, murder and exploit and go free because no one wants to get involved.---------The sad part is that all comes down on the back of thoes least able to aford it. The 9 to5 laborer.

It makes little difrents if it is the White Pine Land Owners, The logger, The Farmer or the little merchant trying to eeek out a living, that has been expoited, when it is all gone YOU have got trouble. This nation was built by REBELS. Some body better get there marbles in the right pocket.

The bible thought at Hosea #4:6 is staring this nation in the face. "My pepple are destroied for lack of knowledge".

If you don't have knowledge enough to see it, when it happens ask your self " how much did I contribute to it.

History indicates that the great nations that have fallen was because of the decay on the inside, not force from with out.

I smell one big rotten stink.

I under stand that the IRS has added about 100 more laws, rules or requirements to what they already could not read, and placed the responability on the working man to interput it correct.

How much----how long----until the people say " I don't care. Come take me away". You know and I know I have not even scratched the surface of the problem. You are a fool if you try to denie that it is there. The little man is the one that pays YOUR WAGES. Continue to add to that load and some day he balk. Because the Highway Dept. has implimented this situation These comments are mostly Directed to them, but if you are Trying to empose personal desires on Any one for The purpose of Exploiting Others you are partaily Responsable for the shatered condation of this County, State & nation.

WITNESS STATEMENT

NAME Nick D. Marich BILL No. SB 155

ADDRESS St. Rt 1, Box 124 Trout Creek, Mt DATE 3-15-83

WHOM DO YOU REPRESENT Whitepine Landowners

SUPPORT _____ OPPOSE _____ AMEND ✓

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

If the State Highway Department has possatine proof of ownership to the 400 ft.; why don't they lay it on the table in front of this committee and the public?

Our papers of ownership should be just as good as theirs and ours are open to the public, all you have to do is go to the county courthouse.

If the highway owned 400 feet why did they buy different amounts of footage from landowners in the area and pay them so much a rod to put up a fence?

FORM CS-34
1-81

WITNESS STATEMENT

NAME Adrienne Marick BILL No. SB 155

ADDRESS Rt 1, Box 124 Trout Creek, Mt DATE 3-15-83

WHOM DO YOU REPRESENT Whitepine Landowners

SUPPORT _____ OPPOSE _____ AMEND ✓

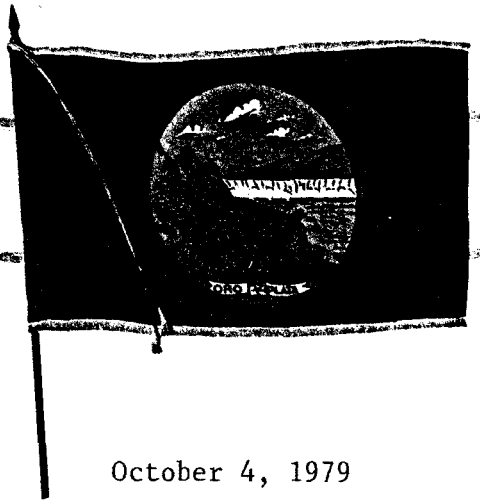
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

The State Highway Dept. should be required to provide possative proof of ownership of the 400 feet of right of way on which Hwy Dept. claims to own before it can sell any portion thereof at a public auction to the highest bidder.

How can the Dept of Hwy R/W legally redo maps showing width of R/W by simply drawing new lines when ever they please. There are letters from the Dept. of Hwy R/W stating different amounts of R/W in front of my property and yet they claim 400 feet. I don't think the Hwy Dept. really knows or can prove what they own or they would show possative proof now. A Quit Claim Deed is not possative proof to me.

FORM CS-34
1-81



THOMAS L. JUDGE
GOVERNOR

STATE OF MONTANA
DEPARTMENT OF HIGHWAYS

HELENA, MONTANA 59601

RONALD P. RICHARDS
DIRECTOR OF HIGHWAYS

IN REPLY REFER TO:

October 4, 1979

Re: FHP 6J2
Parcel 38-Sanders County
Ref: 68-HLJ

Nick S. Marich, Sr.
Route 1 Box 124
Trout Creek, MT 59874

Dear Sir:

Your letter to Mr. Bill Hebert at Kalispell has been forwarded to this office handling and reply.

As explained to you by our land agent, Howard L. Johnson, in his telephone call to you on October 1, 1979, the title of the right of way in this area is very complex. We have turned this over to our title people and as soon as they complete reviewing this matter we will be in further contact with you.

Sincerely,

Robert E. Champion, P.E.
Chief, Right of Way Bureau

REC:HJL:dd:3F

cc: Supervisor, Field Right of Way Section-Missoula
Chief, Field Maintenance Bureau-Kalispell
File

GEORGE VUCANOVICH, CHAIRMAN
HELENA

Wm M. KESSNER, VICE CHAIRMAN
GREAT FALLS

JOHN S. COTE
BUTTE

DAVE MANLEY
BILLINGS

BAXTER HARROW
WOLF POINT

EQUAL EMPLOYMENT OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

BURLINGTON NORTHERN

OFFICE OF
DIVISION SUPERINTENDENT

Missoula, Montana 59801
Telephone (406) 728-8450

Missoula, Montana
June 13, 1980

Mr. Nick Marich, Sr.
Route 1, Box 124
Trout Creek, Montana 59874

Dear Mr. Marich:

Please refer to your letter of May 24 regarding property description of Section 2, Township 23, Range 31 in Sanders County, 17 miles west of Thompson Falls, Montana on Highway 200.

In this particular area we had 200 feet of right-of-way on each side of the track. This right-of-way was turned over the highway department by easement and you would have to contact the Montana State Department of Highways in regard to any use of this land.

Very truly yours,

D. W. Scott

D. W. Scott
Superintendent

RDB:st

INTER-DEPARTMENTAL MEMORANDUM

DEPARTMENT OF HIGHWAYS

To Chief - Right of Way Bureau

From Supervisor - Field R/W Section-Missoula

Date August 28, 1973

Subject FHP 6-J2
Thompson Falls-West
REF: 61-JRR

Over the past several years, Mrs. Helen R. Wuerl of Trout Creek, MT has been in contact with the highway department because her neighbor fenced the approach close to her property. Mrs. Wuerl has been in contact with Bill Hebert, Chief-Maintenance Bureau, Kalispell, who in turn requested this office to investigate the problem.

The problem is that the highway maps do not show the right of way line as puchased.

If the maps were changed to show the right of way as owned by the department, the fence causing the problem would be removed as an encroachment. If we do not own the right of way, Mrs. Wuerl could claim a prescriptive right as this approach was notorius for a period of more than 7 years. With the cloud of ownership over the property, nothing can be done to resolve the problem.

Our preliminary investigation indicates that in Section 2, Township 23 North, Range 31 West, the department owns 150 feet of right of way on the northeast side. Please advise if this is correct, and change the map accordingly, advising Mr. Hebert so he can act on this matter.

JKT:VEJ:mw
Attachment: Deed - Railroad to County
Deed - County to Muir
Deed - County to Department

cc: Wm. J. Hebert, Chief-Field Maintenance Bureau

Avoid Verbal Instructions

DEPARTMENT OF HIGHWAYS

TED SCHWINDEN, GOVERNOR

2701 PROSPECT

STATE OF MONTANA

HELENA, MONTANA 59620

December 23, 1981

F 6-1(11)
Trout Creek - Thompson Falls
Ref: 68-GDF

Mrs. Nick Marich, Sr.
Route 1, Box 124
Trout Creek, MT 59874

Dear Mrs. Marich:

The Department of Highways is considering sales of excess portions of the old railroad right of way between Thompson Falls and Trout Creek. It is probable that when our plans for these sales are completed, you will have the opportunity to purchase the portion in which you are interested.

We do not intend to offer this excess right of way for sale as one tract, but rather would divide it into parcels which correspond as closely as possible to the adjoining ownership. This plan would allow the adjacent owner to bid on such portion rather than the entirety.

State laws mandate that these lands must be offered for sale at public auction. Therefore, we cannot negotiate sales or accept offers of purchase until this has been done. If no bids are received at the public auction sale, we can then sell at a private sale, provided we receive at least 90% of the appraised value.

At this time, we are working on appraisals and making a determination of our permanent right of way needs and on dividing the excess into appropriate tracts. Several sales are planned offering one or more of these tracts. We cannot estimate at this time just when your tract will be offered, but you may rest assured that you will be notified and provided with all information concerning the sales as soon as it is available.

We do thank you for your letter, and appreciate your comments. Please fell free to contact us any time we can be of assistance.

Sincerely,

Jack L. Lida for
Robert E. Champion, P.E., Chief
Right of Way Bureau

REC:WES:mb:70

cc: Mail & File

WITNESS STATEMENT

NAME Bessie J. Kline BILL No. SB # 155

ADDRESS Star Route #1, Box 123, Trout Creek, Mt. 59874 DATE Marcy 15, 1983

WHOM DO YOU REPRESENT Whitepine Landowners

SUPPORT x OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: First of all thank you for this hearing.

1. ~~We feel the Mt. Hwy St. Dept.~~ We feel the Mt. Hwy St. Dept. should have to prove ownership of land.

2. When land is to be ~~asses~~ appraised, that the state appoint one ~~assessor~~ appraiser, the land owner appoints the second, and the two ~~assessors~~ appraisers appoint the third. They ~~assess~~ appraised the land individually, add up the total and divide by three for a fair market value.

3. When a land owner sells property he is required to have his land surveyed. Therefore we feel the State should have the same requirements as the land owners, and the surveyor has to stand good on his survey. We have a piece of property in Whitepine, Mt. that has been surveyed by the same surveyor several times and he is from 1' to 20' with each survey.

4. We have people trying to sell property now. The Title Insurance Companies do not want to give a good Title. Because of the problems before us, which in the past they have given good title with the easement clauses in their Title.
Now the Title Insurance Co.'s are trying to make the seller be responsible for the land they have on the market.

5. According to our abstract their is a paragraph, which reads.
"The Railway Company agrees to convey by quit claim deed to the County for highway purposes, and for no other purpose, that portion of its old right of way between a point about 2550 west of Belknap Railroad Station, and a point where the old main line intersects the north section lines of Section 27 and 28, T. 24 N. of R. 21 W.

FORM CS-34
1-81

OVER

IN WHICH WE THOURTH terminology of the an ABSTRACTER, but we find in the law book 43 U.S.C.S. 912, 913 which is referance that the Abstracter ~~as~~ used, which is of Federal Actions.

This concludes my statement.

I would like a transcript please. Plus a copy of the bill that is Voted upon.

Bessie J. Kline
Star Route #1, Box 123
Trout Creek, Mt. 59874

406-827-4800

Odd

43 USCS 893 Right of permissive settlers on railroad lands restored to Public Domain.

All persons who shall have settled and made valuable and permanent improvements upon any odd numbered section of land within any railroad withdrawal in good faith and with the permission or license of the railroad company for whose benefit the same shall have been made, and with the expectation of purchasing of such company the lands so settled upon, which lands so settled upon and improved, may, for any cause, be restored to the public domain, and who, at the time of such restoration, may not be entitled to enter and acquire title to such lands under the pre-emption, homstead, or timberculture acts of the U. S., shall be permitte, at anytime within 3 month after such restoration, and under such rules and regulations as the Commissioner of the General Land Office [Sec. of the Interior] may prescribe, to purchase not to exceed 106 acres in extent of the ~~acre~~ by legal subdivision, at the price of $2.50 per acrea, and to receive patents therefor. (1-13, 1881 Ch. 19, 21 Stat. 315)

Public Lands
43 USCS 861 Refers to States ND., S.D., MT., ID., OR.

" " 863-Survey of same states as above.

Date: Aug. 18,1894 Ch. 301 § 1, 28 Stat. 394
Jun. 26, 1934 Ch 756 § 22, 48 Stat 1236)

" " 869 Desposal of land for public rec. p.r.

Bessie J. Kline
4.21.123
7C MT. 59874

43 USCS§ 913 Conveyance by land grant railroads of portions of right of way to State, County, or municipality

All railroad companies to which grants for right of way through the public lands have been made by Congress, or their successors in interest or assigns, are hereby authorized to convey to any State, County, orumunicipality any portion of such right of way to be used as a public highway or state: Provided, That no such conveyance shall have the effect to diminish the right of way of such railroad company to a less width than 50' on each side of the center of the main tract of the railroad as now established and maintained. (5-25-20, Ch. 197, 41 Stat. 621)

921-929(omitted) NPRR land Grant under Act July 2, 1864

Chapter 21. Grants in Aid of railroads and wagon roads

§ 886 Survey of lands within limits of railraod grants.

(as Amended Oct. 19, 1980, P. L. 96-470, Title I § 108(b), 94 Stat. 2239.)

§ 888-Title of settlers

§ 886 As amended Oct. 19,1980 P. L. 96-470, Title I, § 108 (b), 94 Stat. 2239.)

1980 Act Oct. 19, 1980, deleted, "and the Sec. of the Interior shall report ot each regular session of Congress what has been done under the foregoing provisions" following "providing for the survey of such lands."

63 Am Jur 2d Public Land §§ 78,82,88

65 Am Jur 2d Railroads § 41

Chapter 21 Grant in aid of RR and WR.

Section 881-914

Bessie J. Pld 123
TC, MT 59874

43USCS 912 Disposition of abandoned or forfeited Railroad Grant

Whenever Public Lands of the U. S. have been or may be granted to on railroad company for use of a right of way for its railroad or as sites for railroad structures of any kind, and use and occupancy of said land for such purposes has sceased or shall hereafter cease, whether by forfeiture or by abandonment by said railroad company declared or decreed by a court of competent jurisdiction or by Act of Congress, then and thereupon all rights, title, interest and estate of the U. S. in said lands shall, except such part thereof as may be embraced in a public highway legally established within one year after the date of said decree or forfeiture or abandonment be transferred to and vested in any person, firm, or corporation, assigns, or successors in title and interest to whom or to which title of the U. S. may have been or may be granted, conveying or purporting to convey the whole of the legal subdicision or subdivisions traversed or occupied by such railroad or railroad structrues of any kind as aforesaid, except land within a municipality the title to which, upon forfeiture or abandonment, as herein provided, shall vest in such municiplaity, and this by virtue of the patent thereto and without the necessity of any other or further conveyance or assurance of any kind or nature whatsoever: Provided, That this Act [this sections] shall not affect conveyances made by any railroad company of portion of its right of way if such conveyance be among those which have been or may hereafter [after 3-8-1922] and before such forfeiture or abandonment be validated and convirmed by any Act of Congress; nor shall this Act [this section] affect any public highway now on said right of way [on Mar. 8-1922] : Provided further, That the transfer of such lands shall be subject to and contain

Grace T. Kirk
Atty
TC. 117. 59879

Con't page "2"

43USCS 912

reservations in favor of the U. S. of all oil, gas, and other minerals in lands so transferred and conveyed, with the right to prospect for mine, and remove same (Mar 8, 1922, Ch. 94,42 Stat. 414)

Cases: St. of Wyoming (1976) 83 Id 364.

Wyoming V Andrus (1977, CA 10 Wyo) 602 F2d 1379

Case

In action to quiet title in themselves as abutting landowners to 50' strip of land lying on either side of 100' right of way owned and maintained by railroad, where landowners allege abandonment by railroad of strip in question with subsequent vesting of title in themselves, partial abandonment by railroad excent of way, granted by U. S., is not permissible under "Act of 1922 on the Abandoned Portions of right of way Granted to railroad company "(43 USCS § 912; history of legislation indicated only 2 situations in which Act would apply, namely, subsequent forfeiture by railroad of complete right of way or change in railroads location, neither of which pertains. Allard Cattle Co. v. Coloradao and S. R. Co (1974) 187 Colo 1, 530 P2d 503.

Basin Title
H.W. 183
Tc. MT 59877

NORTHERN PACIFIC RAILWAY COMPANY,
a corporation

and

THE COUNTY OF SANDERS,
State of Montana

AGREEMENT
Re: abandoned railroad right of way

Dated May 7, 1928

Filed May 11, 1928

Book 2 Contracts, p. 50

Consideration: Mutual dependent promises herein

WHEREAS, the Interstate Commerce Commission has granted to the Railway Company authority to abandon a portion of its old line of railroad in Sanders County between the east connection of said old line with its new main line at Pinehurst near Mile Post No. 37, and the west connection of said old line with its new main line at Trout Creek near Mile Post No. 54, and the Railway Company is now removing the rails, etc. therefrom; and the County desires to make use of a large portion of the old right of way and road bed for public highway purposes.

NOW THEREFORE: the County agrees to procure the necessary right of way and to legally establish, construct and thereafter maintain a satisfactory public highway from the Village of White Pine to a point on the main line of the Railway Company in the SW¼ of Sec. 17, T. 23 N. of R. 30 W. Construction will be completed not later than July 1, 1928.

The Railway Company agrees to convey by quit claim deed to the County for highway purposes, and for no other purpose, that portion of its old right of way between a point about 2550 west of Belknap Railroad Station, and a point where the old main line intersects the north section lines of Section 27 and 28, T. 24 N. of R. 31 W.

As to such portions so quit-claimed, upon which the County shall within one year from May 7, 1928, legally establish a highway, the Railway Company agrees to save the County harmless, in the use thereof as a highway, as against any adverse claim thereto.

NORTHERN PACIFIC RAILWAY COMPANY
By C. W. Bunn
Vice President

COUNTY OF SANDERS, STATE OF MONTANA
By A. Zebish
As Chairman of Board of County Commissioners.

(SEAL OF SANDERS COUNTY)
Attest: A. J. Dorris
Clerk & Recorder

(ABSTRACTER'S NOTE: pp. 49 concern the abandoned railroad r/w, and are included for information)

VLB 48

WITNESS STATEMENT

Name Wayne Budt

Committee On H&T

Address 911 Tillewille

Date 3-16-83

Representing MPSC

Support X

Bill No. SB 120

Oppose

Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

HOUSE HIGHWAYS AND TRANSPORTATION

BILL SUMMARIES
March 15, 1983

SB 120 removes the requirement that the Public Service Commission must approve all leases of power equipment by regulated motor carriers.

SB 155 provides that upon the abandonment by the state of its interest in real property which it acquired for the purpose of establishing a highway, the property reverts to the contiguous owner or his successor in interest. The property may not be used for commercial purposes or it reverts to the state.

SB 330 revises the law relating to distinctive license plates for national guardsmen. The plates will be in lieu of regular plates. The plates will be issued by county treasurers upon payment of all applicable taxes and fees.

HOUSE HIGHWAYS AND TRANSPORTATION

BILL SUMMARIES
March 15, 1983

Aye

SB 120 removes the requirement that the Public Service Commission must approve all leases of power equipment by regulated motor carriers.

?

SB 155 provides that upon the abandonment by the state of its interest in real property which it acquired for the purpose of establishing a highway, the property reverts to the contiguous owner or his successor in interest. The property may not be used for commercial purposes or it reverts to the state.

AYE
even if amended

SB 330 revises the law relating to distinctive license plates for national guardsmen. The plates will be in lieu of regular plates. The plates will be issued by county treasurers upon payment of all applicable taxes and fees.

Aye - SB 403 -
NO TO any Tabling motion

Jim Hammond

Aye - SB - 330

Aye - SB - 387

SENATE BILL 120

Senate Bill 120 proposes to remove the requirement that all leases between Owner Operators and Carriers be approved by the Commission. Under the present statute the carriers are required to submit to the Commission all equipment leases. The Commission staff must then sign off on these leases and return copies to the carriers. A copy must then be carried in the vehicle.

Under the proposed language in Senate Bill 120, the requirement for prior Commission approval would be eliminated.

The carrier or his agent would still be required to have a lease and carry a copy in the operating vehicle so that enforcement personnel can follow the trail of ownership of that particular vehicle.

Elimination of the prior approval requirement should result in:

1. Less time and expense to the carriers.
2. Less time and expense to the Commission.
3. Bring Montana leasing requirements in line with those of the Interstate Commerce Commission.

The Montana Public Service Commission feels that Senate Bill 120 would help eliminate paperwork for both the carrier and the Commission, but would not in any way diminish enforcement of the Motor Carrier Act.

We urge this Committee to give a do pass to Senate Bill 120.

The Big Sky Country

MONTANA STATE HOUSE OF REPRESENTATIVES

March 16, 1983

Mr. Larry Majerus
Administrator, Motor Vehicle Division
Department of Justice
Room 255, Scott Hart Building
303 Roberts
Helena, MT 59605

Dear Mr. Majerus:

The House Highways and Transportation Committee is writing this letter in regard to Senate Bill No. 330.

The Committee wishes to express to you its desire that the Motor Vehicle Division include nonremovable county designation stickers on special National Guard license plates.

As you indicated in your testimony on Senate Bill No. 330, the Motor Vehicle Division can do this under existing law. The Committee wishes to express its intent that this be done. Thank you for your consideration in this matter.

Sincerely,

Rep. Hubert Abrams

Rep. Hubert Abrams
Chairman, House Highways and
Transportation Committee

HA/jg

MINUTES OF THE MEETING OF THE HOUSE HIGHWAYS AND TRANSPORTATION COMMITTEE, MARCH 22, 1983

The meeting was called to order by Chairman Abrams on Tuesday, March 22, 1983 at 12:30pm in Room 129, State Capitol. All members were present with the exception of Representatives Stobie and Hemstad, who were excused.

HEARINGS

SENATE BILL 454. SEN. JUDY JACOBSON, District 42, Silver Bow County, testified as sponsor of the bill, which would provide bonding to accelerate the interstate program in the amount of $17.7 million and $82.6 million for other programs. She said only eight states have larger unfunded systems than Montana, adding $60 million in projects for 1986-1988 could be funded in 1984. Sen. Jacobson told the Committee the $45 million in bonds would have a net cost to the State of $.5 million, which would be locked in September, 1983 when the bonds were sold, adding the federal government would be obligated to reimburse costs once the projects were approved. She said the ACI reimbursement could be reinvested to the benefit of the State if it came in a lump sum and that the bill would create 792 new jobs, with a payroll of $20 million.

PROPONENTS

MR. JIM MAYES, Operating Engineers Local 400, read from prepared testimony in support of the bill (exhibit).

MR. LARRY HUSS, Montana Highway Users Federation said the bill is a sound fiscal program and would save the State use of inflated dollars in the future.

MR. LARRY TOBIASON, Montana Automobile Association, told the Committee gaps in the interstate system are unsafe and would only be enhanced by completion.

MR. DON JUDGE, Montana AFL-CIO, read from prepared testimony in support of the bill (exhibit).

MR. TOM STAPLES, Montana Motor Carriers Association, stated his support of the bill.

MR. SAM HUBBARD, Montana Department of Highways told the Committee completion of the interstate system is top priority, preferably by 1990.

OPPONENTS

There were no opponents of the bill.

QUESTIONS

REP. KEYSER asked Mr. Richard Harris, First Boston Corporation about bonding. Mr. Harris replied he could not get too close to structure as the bonds were not sold yet and said they would mature in 1990 at 7 1/2% to be reinvested at 9 1/2%.

MR. HUBBARD said the bonding bill would provide $120 million, adding financing costs would be $3.2 million and the debt service reserve fund, $21.7 million, with possible Federal Highway Administration participation to the benefit of the State.

REP. KOEHNKE asked how many incomplete interstate miles there were in Montana. Mr. Hubbard replied there are 74 miles of which 47 are 4-lane gaps.

REP. HARP told the Committee he was concerned with bonding being unable to keep up with revenues when payment is due. He asked Mr. Harris what rating First Boston would give the program. Mr. Harris replied Montana has a particularly good highway fund and bonds would be rated at least AA, with a benefit to the State of approximately $6.5 million.

REP. KOEHNKE asked about projections. Mr Hubbard said he expected to have all projects under contract at the end of the next biennium.

REP. KEYSER asked how much would be necessary to complete the interstate gap near Dillon. Mr. Hubbard said there was a problem with stabilizing a slide area and the Union Pacific right of way, but the project was anticipated to be contracted in 1986.

REP. HARP commented there seems to be greater emphasis on I-4R monies. Mr. Hubbard responded, explaining interstate construction would remain about level, while emphasis appeared to be increasing dramatically.

CHAIRMAN ABRAMS asked for an explanation of proposed funding through 1990 if federal funds were to cease or decrease. Mr. Gary Wicks, Director, Department of Highways told him once the federal government approves a project, it is obligated through 1990 to reimburse the State for funds expended in the interstate construction program.

MR. KEN JOHNSON, Federal Highway Administration, said he would surmise there would be no difference in making these approvals.

CHAIRMAN ABRAMS asked about the transfer of funds referred to on page 4, Sections 3 and 4 of the bill. Mr. Wicks advised all earnings on the highway earmarked account presently go to the general fund and he wanted earnings from the bonding program to remain in the earmarked account, after this biennium.

REP. HARP said he wondered if either the Legislative Fiscal Analyst or the Office of Budget and Program Planning have included the bonding program in their revenue projections.

The hearing was closed on Senate Bill 454. Rep. Harrington was asked to carry the bill.

EXECUTIVE SESSION

SENATE BILL 402. REP. BROWN moved the bill Be Concurred In and be amended according to amendments 1,2, and 3 (exhibit). Rep. Keyser seconded the motion, which was unanimously approved.

REP. BROWN moved the second set of amendments, one through seven be approved. Rep. Keyser seconded the motion, which was given unanimous approval of the Committee.

REP. BROWN moved the bill Be Concurred In as Amended.

REP. SOLBERG said he was still concerned with the legal/financial responsibility of a bicyclist who causes an accident. Col. Landon, Montana Highway Patrol, said the bill would provide more help with regard to civil action rather than criminal.

REP. SOLBERG told Rep. Brown he found it difficult to label a child's bicycle a vehicle when the child has no financial resources and is not financially responsible. Rep. Underdal added his agreement with Rep. Solberg.

REP. KOEHNKE asked if the bill addressed a bicycle as a vehicle. Rep. Brown said a provision was made in the statutes to levy a fee on bicycles, which is presently done in the city of Billings, adding the bill would encourage formation of educational groups for proper bicycle use.

REP. BROWN said the bill would make bicyclists more responsible and the minimal standards proposed for bicycle conduct are better than those presently in force. Rep. Lybeck concurred with Rep. Brown.

REP. KEYSER said the bill would at least allow violators to be charged according to the violation committed.

REP. KOEHNKE asked what is being done to educate children with regard to vehicle statutes. Col. Landon told him the educational community would structure training, adding he anticipated few arrests.

The motion made by Rep. Brown was given committee approval by all members except Representatives Howe and Solberg, who voted no.

SENATE BILL 287. REP. BROWN moved the bill Be Concurred In. Rep. Hammond seconded the motion, which was given unanimous committee approval.

REP. KEYSER was asked to carry the bill.

SENATE BILL 318. REP. SOLBERG moved the bill Be Concurred In. Rep. Lybeck seconded the motion, which was given unanimous committee approval.

SENATE BILL 155. MR. GREG PETESCH, Legislative Council Attorney, suggested codification instructions be included to eliminate any conflict with Senate Bill 170.

REP. BROWN moved the amendment be approved. Rep. Harp seconded the motion, which was unanimously approved by the Committee.

REP. BROWN moved the bill Be Concurred In as Amended. The motion was seconded by Rep. Harp and unanimously approved.

CHAIRMAN ABRAMS advised executive action on Senate Bill 454 would be postponed.

The meeting was adjourned at 2:37pm.

Hubert Abrams by SS
REP. HUBERT ABRAMS, CHAIRMAN

Joann T. Gibson, Secretary

STANDING COMMITTEE REPORT

MARCH 22, 19 93

MR. SPEAKER:

We, your committee on HIGHWAYS AND TRANSPORTATION

having had under consideration SENATE Bill No. 402

THIRD reading copy (BLUE color)

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING A BICYCLE AS A "VEHICLE"; REVISING AND CLARIFYING THE BICYCLE TRAFFIC LAWS; AMENDING SECTIONS 61-1-103, 61-1-123, 61-8-333, 61-8-336, 61-8-338, 61-8-354, 61-8-368, 61-8-504, 61-8-602, 61-8-604, AND 61-8-605, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Respectfully report as follows: That SENATE Bill No. 402

Be amended as follows: (attached)

DO PASS

REP. HUBERT ABRAMS

Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

HOUSE HIGHWAYS AND TRANSPORTATION COMMITTEE, MARCH 22, 1983

Amend SB 402, third reading (blue) copy, as follows:

1. Page 4, line 7.
Following: "(2)"
Insert: "(a)"

2. Page 4, line 8.
Following: "or" at the end of line 8
Insert: "in subsection (2)(b).
(b) A person operating a bicycle who intends to turn left"

3. Page 4, line 10
Following: line 9
Strike: "side" at the beginning of line 10
Insert: "curb or edge"

4. Page 4, line 11.
Following: "roadway, the"
Strike: "bicycle operator"
Insert: "person"

5. Page 4, line 12.
Following: "practicable to the"
Strike: "side"
Insert: "curb or edge"
Following: "roadway"
Strike: ","

6. Page 4, line 13.
Following: "far"
Insert: "right"
Following: "turning, the"
Strike: "bicycle"

7. Page 4, line 14.
Following: line 13
Strike: "operator" at beginning of line 14
Insert: "person"
Following: "shall"
Insert: "yield to through traffic and shall"

REP. HUBERT ABRAMS, CHAIRMAN

Amend SB 402, third reading (blue) copy, as follows:

8) Page 11, line 1.
Following: "~~in single file~~"
Strike: "not more than two abreast"
Insert: "in single file"
Following: "except"
Insert: "when: (a) riding"

9) Page 11, line 3.
Following: "of bicycles"
Strike: "."
Insert: ";"

10) Page 11, line 5 through line 8.
Following: "~~by so doing~~"
Strike: the remainder of line 5 through "lane" on line 8
Insert: "(b) overtaking and passing another bicycle;
(c) riding on a paved shoulder or in a parking lane, in which case the persons may ride two abreast; or
(d) riding within a single lane on a laned roadway with at least two lanes in each direction, in which case the persons may ride two abreast if they do not impede the normal and reasonable movement of traffic more than they would otherwise impede such traffic by riding single file and in accordance with the provisions of this chapter"

CK

AND AS AMENDED
BE CONCURRED IN

REP. HUBERT ABRAMS, CHAIRMAN

STANDING COMMITTEE REPORT

MARCH 22 19 83

MR. SPEAKER:

We, your committee on HIGHWAYS AND TRANSPORTATION

having had under consideration SENATE Bill No. 287

THIRD reading copy (BLUE color)

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION 22-3-107, MCA, TO ASSIGN THE MONTANA HISTORICAL SOCIETY THE DUTY OF PUBLISHING A ROADSIDE HISTORY OF MONTANA."

Respectfully report as follows: That SENATE Bill No. 287

BE CONCURRED IN

~~DO PASS~~

REP. HUBERT ABRAMS

Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

STANDING COMMITTEE REPORT

MARCH 22 19 83

MR. SPEAKER:

We, your committee on HIGHWAYSSAND TRANSPORTATION

having had under consideration SENATE Bill No. 318

THIRD reading copy (BLUE color)

A BILL FOR AN ACT ENTITEED: "AN ACT TO AMEND THE PROPORTIONAL VEHICLE REGISTRATION LAW; TO CHANGE THE DEFINITION OF THE TERM "RRECEDING YEAR"; TO REVISE THE APPLICATION REQUIREMENTS; AND TO CHANGE THE PROCEDURE FOR THE WITHDRAWAL OF FLEET VEHICLES; AMENDING SECTIONS 61-3-712, 61-3-721, AND 61-3-725, MCA."

Respectfully report as follows: That SENATE Bill No. 318

BE CONCURRED IN

~~DO PASS~~

REP. HUBERT ABRAMS

Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

STANDING COMMITTEE REPORT

MARCH 22 19 83

MR. SPEAKER:

We, your committee on HIGHWAYS AND TRANSPORTATION

having had under consideration SENATE Bill No. 155

THIRD reading copy (BLUE color)

A BILL FOR AN ACT ENTITLED: "AN ACT GIVING VESTING THE OWNER OF CONTIGUOUS PROPERTY ~~THE RIGHT TO MEET THE HIGH BID FOR HIGHWAY FRONTAGE ACQUIRED FROM A RAILROAD; PROVIDING FOR INSTALLMENT PURCHASES; AMENDING SECTION 60-4-204, MCA~~ WITH ANY INTEREST ABANDONED BY THE STATE IN PROPERTY ACQUIRED FOR ESTABLISHMENT OF A HIGHWAY."

Respectfully report as follows: That SENATE Bill No. 155

Be amended as follows:

1) Page 3, lin3 25.
Following: line 24
Insert: NEW SECTION. "Section 2. Codification Instruction. Section 1 is intended to be codified as an integral part of Title 60, chapter 4, part 2, and the provisions of Title 60, chapter 4, part 2, apply to Section 1."

AND AS AMENDED
BE CONCURRED IN

~~DO PASS~~

REP. HUBERT ABRAMS
Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

VISITOR'S REGISTER

HOUSE Highways COMMITTEE

BILL SB 454 DATE 3-22-83

SPONSOR

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
B HAVDAHL	Helena	Mont. Motor Carriers	✓	
L. Tobiason	"	Mont. Auto Assn	✓	
T. Staples	"	MT Trade Commission	✓	
Jim MAYES	HELENA	Local 400 IUOE	✓	
Larry Huss	"	Mont Highway Users	✓	
John Ottinger	HELENA	Dept of Highways	✓	
Sam Hubbard	"	" "	✓	
Dan Judge	Helena	MT STATE AFL-CIO	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

FORM CS-33

WITNESS STATEMENT

Name Tom Staples Committee On Highways

Address 612 Power Blocks Date 3-22-83

Representing Mont Trade Commission Support X

Bill No. SB 454 Oppose

Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

WITNESS STATEMENT

Name Larry Hill Committee On Health

Address Helena Date 3-20-85

Representing Mont. Hosp. Assn. Support X

Bill No. SB 407 Oppose

Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

Bill Summary

House Highways and Transportation Committee

March 22, 1983

HB 454 authorizes the Board of Examiners to issue highway revenue bonds, the proceeds of which would be used for the construction, reconstruction, maintenance, and repair of both federal-aid and state highways. The bonds would be repaid through the pledge of highway earmarked revwenue. Up to $150 million worth of bonds could be outstanding at any time.

GP3 BS3/22

3-22-83
SB 454
Ex

MONTANA DEPARTMENT OF HIGHWAYS

BOND FINANCING PROPOSAL

ONLY AFFECTS FEDERAL FUNDING

The Montana Department of Highways has a $200 million budget with many revenue sources and expense accounts.

$100.3 MILLION IN FEDERAL APPORTIONMENTS

Presently, the State's annual federal funding includes about $17.7 million for Interstate construction and an additional $82.6 million for all other federal programs.

INTERSTATE NEED

Only eight states have a larger percentage than Montana of their interstate system still unfinished.

ACCELERATE $60 MILLION INTO 1984

This plan is designed to accelerate the construction of Interstate projects totaling approximately $60 million dollars originally scheduled for fiscal years 1986 through 1988 so the work can begin in fiscal years 1984 and 1985.

NOT A REPLACEMENT FOR PROPOSED REVENUE INCREASES

An important question is how the new federal user fees and the new proposed state revenues on fuel and other sources may affect this proposal. Federal Interstate construction funding for Montana from the federal revenue increases in 1983 will be minimal for the next several years. In addition, enactment of any other Department of Highways revenue proposals presently before the Legislature would not affect this financing; those revenue measures remain necessary to pay for current level programs and the reconstruction trust program.

MANY BENEFITS

Among the many reasons to undertake this financing program are (1) to obtain the use of some important Interstate highways earlier, (2) to give the state's economy a major boost almost immediately, and (3) to save approximately $15.3 million in inflation costs.

FINANCING STRUCTURE

The proposed financing structure would have the Department of Highways issue about $145 million in Revenue Bonds which would be secured by Highway program revenues. The net cost to the State of the proposed structure would be approximately $0.5 million, based on conservative assumptions regarding interest rates, current IRS regulations, the Department's construction program, and revenue receipts. The actual cost could vary depending upon the final financial structure used and the legal requirements which are prevalent at the time the bonds are issued. The financing would include moneys for both the $60 million of Advanced Construc-

tion-Interstate (ACI) projects as well as other Department projects in order to allow the Department to better manage its cash flow and thereby generate investment earnings which would aid in the repayment of the bonds. All costs of the program will be locked in at the time the bonds are sold (by September 1983), virtually eliminating the risk of any unforeseen costs (see cash flow and timetable attached).

CASH FLOW MANAGEMENT HELPS REPAY NOTES AND/OR BONDS

Under this financing plan, the State of Montana can borrow money through bonds at a rate lower than the return it can realize on investments. With effective cash flow management funds will be generated through investment earnings to help repay the bonds.

FEDERAL GOVERNMENT ACI FULLY OBLIGATED

Once the federal government has approved the projects, it is contractually obligated to make reimbursement for them, removing the obligation from the State, even if federal Interstate funding laws change. These reimbursements can also be used to help repay the bonds.

COSTS TO STATE

The cost to the State of this borrowing will depend upon the financing structure as well as the borrowing costs and the investment rates available for borrowed funds. Conservative assumptions regarding market conditions and reinvestment rates have resulted in the estimated net cost of $0.5 million. Not included in these assumptions is any allowance for additional reimbursement by the Federal Highway Administration for the State's interest costs, or for more favorable investment earnings that would result if ACI reimbursements are made in a lump sum instead of the anticipated 36-month reimbursement period.

BENEFITS TO STATE

The State will realize the following benefits:

790 NEW JOBS

1. An estimated 790 new jobs now - when and where they are needed most.

$20 MILLION PAYROLL

2. A direct payroll from the accelerated program of more than $20 million plus the "multiplier effect."

ECONOMIC BENEFITS

3. Much earlier use of five key sections of Montana Interstate with an economic value of many millions of dollars.

FAVORABLE BIDDING CLIMATE NOW

4. A presently favorable construction bidding climate, which will enable Montana to construct more interstate with the same dollars than under ordinary financing.

SAVES INFLATION COSTS

5. A savings of $15.3 million in inflation costs.

FLEXIBILITY

The proposed bill (SB 454) provides flexibility for the Department in selecting the best financing structure available at the time of issue. The Department will review market conditions at that time in order to insure that the alternative with the lowest risk/costs is selected. Based upon current market conditions, the structure proposed here creates the highest value for virtually no risk. Also, authorizing a financing program now will allow flexibility in obtaining the lowest cost financing and the most effective cash flow management and thus the lowest net cost to Montana.

PROPOSED ACI PROJECTS

Project	Route	Cost (in millions)	Letting Date (FY)
Bernice-Basin	I-15	$17.5	1984
Elk Park-North	I-15	7.9	1984
Bernice-South	I-15	10.8	1984
Springdale-West	I-90	9.0	1985
Armstead-Pipe Organ	I-15	6.5	1985
Sloway-Superior (final surface)	I-90	4.5	1985
Lodge Grass-North (final surface)	I-90	4.0	1985
TOTAL		$60.2	

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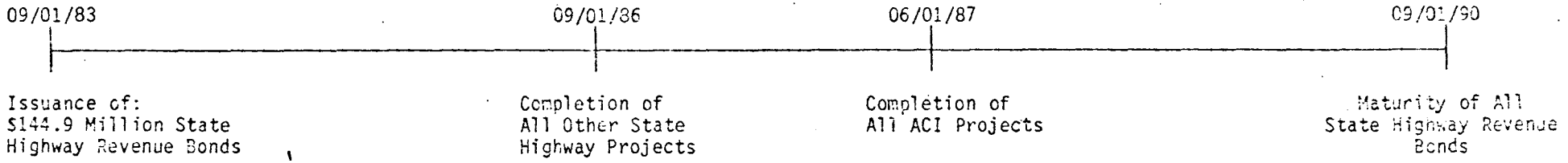
Bond Issue for ACI Projects &

Other State Highway Projects



Components of the Bond Issue
(in millions)

Construction Funds:	$120.0
Financing Costs:	3.2
Debt Serv. Reserve Fund:	21.7
Capitalized Interest:	-0-
Total	$144.9

Issue Date:	9-1-83
Final Maturity Date:	9-1-90
Net Interest Cost:	7.06%

Flow of Funds
(in millions)

Total Debt Service:	$199.0
Less:	
Department Construction Funds:	70.0
Investment Earnings:	48.0
DSRF Principal:	21.7
ACI Reimbursements:	58.8
Total Cost to State:	$ 0.5

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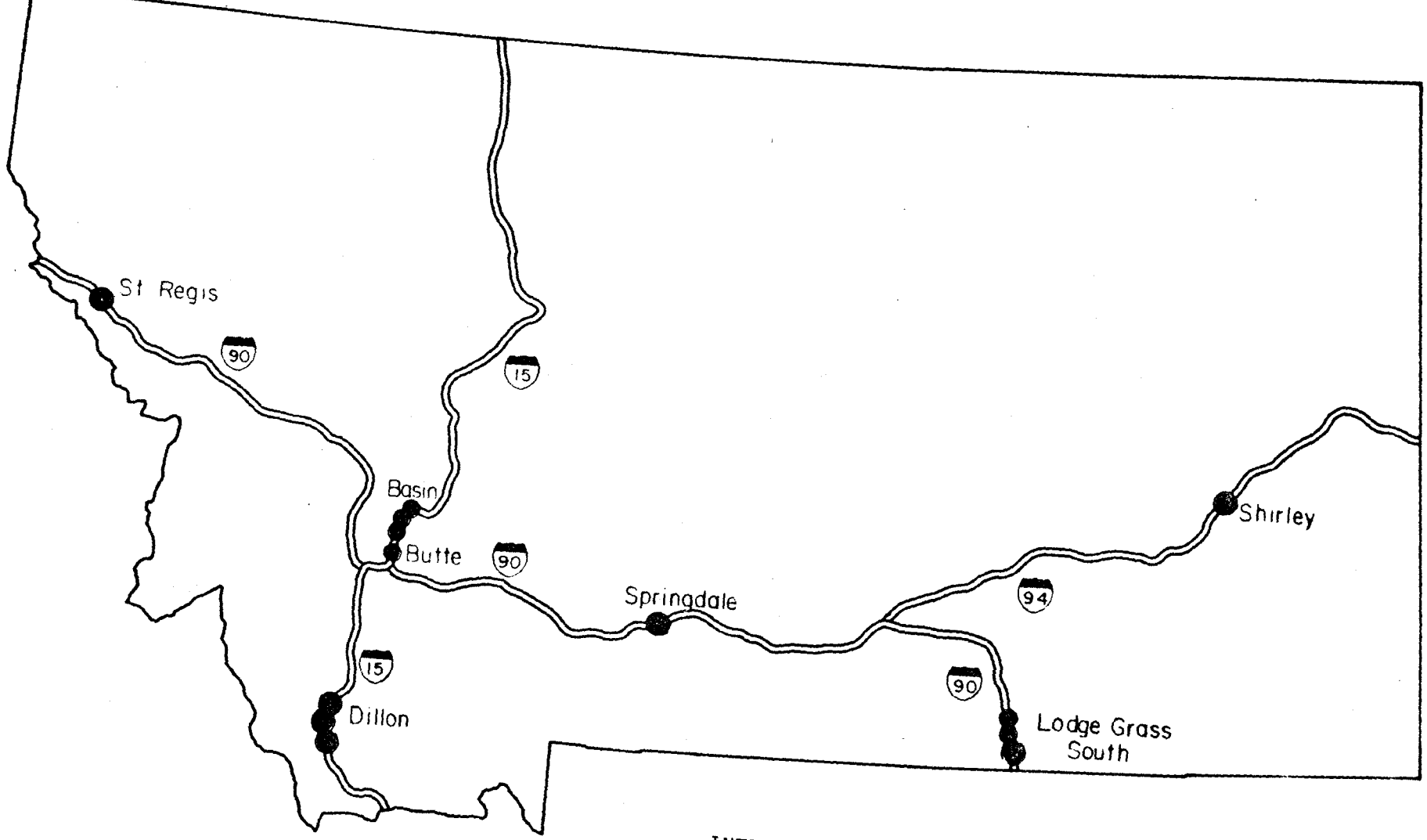

INTERSTATE GAPS IN MONTANA

MONTANA STATE AFL-CIO
APRIL 29 1956

Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARY

ZIP CODE 59624
406/442-1708

TESTIMONY OF DON JUDGE ON SENATE BILL 454, HEARINGS OF THE HOUSE HIGHWAYS AND TRANSPORTATION COMMITTEE, MARCH 22, 1983

I am Don Judge with the Montana State AFL-CIO. We support Senate Bill 454.

This is a complex bill involving some financial transactions that I don't pretend to understand. No doubt experts from the Highway Department will be able to answer all of your questions about the specifics of how the money is to be raised and spent.

I am here to support the concept of completing the interstate system ahead of schedule. This is a good idea, for the workers who will get the highway jobs, and for the entire economy of the state.

Businesses benefit in two ways, from having better transportation available, and from having highway workers with paychecks to spend in their stores. According to the Highway Department, much of the work to be done is on I-15 near Butte, which currently has an unemployment rate of 14.1%. These jobs will help workers and businesses.

Improving and maintaining the infrastructure is an important function of government, one that is entirely beyond the capacity of the private sector. Infrastructure is an important component of a valid economic development plan, especially in Montana which already has a severe transportation problem due to our distance from major markets.

This bill basically borrows money against future income. That seems to be an appropriate course of action during the present recession. When times improve, the funding crunch should not be as great as it is at present.

We ask that you give Senate Bill 454 a "do pass" recommendation.

EX.

International Union of Operating Engineers

LOCAL 400 — Affiliated with AFL-CIO — Montana

JOHN SLATTERY
President

D. F. "DAVE" JOHNSTON
Vice President

LOUIS LAYMAN
Treasurer

RALPH REID
Rec. Corres. Secretary

BILL BURLINGAME
Business Manager &
Financial Secretary

HEADQUARTERS
2737 Airport Road
Helena, Montana 59601
Telephone: (406) 442-9397

TESTIMONY OF JIM MAYES ON SENATE BILL 454, BEFORE THE HOUSE HIGHWAYS COMMITTEE, MARCH 22, 1983

I am Jim Mayes, with the state's largest local union, Operating Engineers, Local 400.

Senate Bill 454 is a jobs bill of the best kind. It creates jobs in occupations and in geographical areas which need it. Our union is currently experiencing about 45% unemployment. That is up from a normal 22% unemployment at this time of the year, due to the seasonal nature of our work. This bill will put some of our members back to work, along with other types of workers.

The bill creates jobs which are not make-work jobs, but which provide an invaluable public service. The economy needs good roads, and the government is the only one who can build and repair those roads.

Not only does this bill create jobs, but it does so without putting even a small dent in the present state budget. It issues bonds against future income, so in effect this simply does the work now based on future income which was going to be raised and spent anyway. If the national trends are reversed, and the federal government starts putting more emphasis on highways again, we will have the benefit of jobs now when we need them and also later.

We support Senate Bill 454. Thank you.

(Union bug removed for copying purposes)